THE BODIE OF THE COMMON-LAW OF ENGLAND:

As it stood in force before it was altered by Statute, or Acts of *PARLIAMENT*, or *STATE*.

Together with an exact Collection of such Statutes, as have altered, or do otherwise concern the same.

Whereunto is also annexed certain *Tables* containing a *Summary* of the whole Law, for the help and delight of such Students as affect *Method*.

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BRITANNICVM

The Preface.

THe Summary *of the Common Law* (*extracted, for the moſt part, out of Sir* Henry Finch *Knight, his learned Treatiſe of the Law*) *being intended onely to preſent the Original frame of that Law, and not capable of comprehending the* Rules *or* Maxims *of the ſeveral titles of Law, therein contained: It is conceived expedient here further to preſent the ſame Authours continued method of the ſame Law* (*conformable to that Table*) *which conteins the* Rules *of Law inſerted under their proper titles reſpectively; ſo as the the Student by often reading over, and fixing in his memory the order and matter of this Treatiſe, may thereby attain ſuch a certain notion of the Common Law, as may make him apt and ready to apprehend any caſe may be put him, or any Law Book he ſhall read: Howbeit, although the* Rules *here propounded are regularly true, and conformable to the ancient Common Law, yet they have been and ſtill are ſubject to be altered by two other Lawes,* viz. *the* Statute-law, *and the* Law *of* Reaſon: *As for the firſt, it hath been a Law framed in all Ages by the Prudence of* Parliaments

aments *for prevention of Inconveniencies found in the Common Law, according to the condition of the people, and ſtate of affairs in the ſeveral times, when it was made; a brief Collection whereof* (viz. *of ſo much as alters, or otherwiſe concerns the Common Law*) *is hereunto annexed. The other is as ancient as the Creation, and coming into the world with man cannot be abrogated, this laſt many times controuls the Common Law, when in reſpect of ſome accidents or circumſtances, the Judges are conſtrained to make a conſtruction according to one or more Rules of reaſon* (*if not*) *againſt* (*at leaſt varying from*) *a poſitive* Rule *of Law, as might be exemplied by many Inſtances, if it were now convenient to inſiſt thereupon: but that being deferred to a fitter opportunity, the* Abſtract *following invites your ſerious and indulgent peruſal.*

THE BODIE OF THE *COMMON LAW* OF ENGLAND.

CHAP. I.

The Definition of the Common Law, also of the Place where, and the Persons by whom it is used.

I. THE Common Law of *England* is a Law used time out of mind throughout the Realm.

II. The Realm of *England* is divided into *Counties*, (in all 39.) and each County into several *Towns*, a Precinct which anciently contained ten Families, called *Tithings*, and ten of those Tithings made a Precinct called an *Hundred*.

III. In some Counties, Towns, and other places of the Realm, there be special Usages time out of mind, differing from the Common Law, which are called *Customs*.

IV. A County is a part of the Realm, entirely governed by one Sheriff.

V. Every one ought to be Inhabitant within some

tithing, and there find ſureties for his good behaviour.

VI. Divers Towns have *Hamlets* in them, and ſome ſpecial places there be, out of any Town or Hamlet.

VII. The perſons within the Realm are to be conſidered, either as one entire body, or as particular perſons.

VIII. As one entire Body, it conſiſteth of the King, and his Subjects.

IX. The King is the Head of the Common-wealth, immediatly under God.

X. And therefore the King hath a ſhadow of the excellencies that are in God, in a ſimilitudinary manner given him, as

1 XI. Infiniteneſs.
2 XII. Perfection.
3 XIII. Majeſty.
4 XIV. Soveraignty.
5 XV. Power.
6 XVI. Perpetuity.
7 XVII. Juſtice.
8 XVIII. Truth.
9 XIX. He hath alſo a Prerogative in all things that are not injurious to the Subject.

XX. In regard of the King, the Queen his Wife is participant of divers Prerogatives above other women.

XXI. His Subjects are the members of the Common-wealth, and are Barons and Commons.

XXII. The Barons are called the Peers of the Realm.

XXIII. All the reſt are Commons.

XXIV. The particular perſons, are natural perſons, or Bodies Politique.

XXV. The natural perſons are every man.

XXVI. A Body Politique is a body in fixion of Law, that endureth in perpetual ſucceſſion; ſuch is the King

King alone, and by himself considered, and a Parson (called) the *Rector* of a Church.

XXVII. The Parson in regard of his continual attendance upon that sacred function, is freed from all personal charges, that may hinder him, in his calling.

XXVIII. So is every other Clerk within Orders.

XXIX. To the Parson belongeth the Tenth of all manner of yearly encrease.

XXX. Every Parson must be presented to the Ordinary, who is to admit him.

XXXI. And then the Arch-Deacon is to put him in possession, by delivering the Ring of the Church door, and ringing the Bells.

XXXII. The Incumbent hath not the meer right in him of Land in the Right of his Church.

XXXIII. Therefore every act which he doth with such land, may be avoided, when he ceaseth to be Incumbent, except such as are done by consent of Patron and Ordinary, which bind for ever.

XXXIV. If the Church be void six months, the Ordinary may *Collate*, or appoint a Clerk of his own; and if it be void six months after his time, then the Metropolitane, and six months after his time, the King may present, if the Patron present not before them.

XXXV. When one Church is not able to find the Cure, the Ordinary by consent of the Patrons may unite it to some other.

XXXVI. Besides those Corporations that were at the Common Law, there be diverse other, which have grown of latter time, by special foundation election, whereof some are aggregate of many persons, *viz.* of an head and body: Others consist in one single person.

XXXVII. These Corporations are Temporal or Spiritual.

XXXVIII. The Temporal are made by the King, as Major and Comminalty; also Colledges, as Master and Fellows, &c.

XXXIX. Divers Towns are so Incorporate before time of memory, and are called *Boroughs*.

XL. The Spiritual ones were for the most part made by the Pope, but had their power to purchase from the King.

XLI. These are also of two sorts, *viz.* Regular, or Secular.

XLII. Regular, which have entred into Religion, professing to vow three things, *viz.* *Obedience*, voluntary *Poverty*, and perpetual *Chastity*.

XLIII. And therefore these are dead persons in Law, onely their head hath power to purchase, or do such other things to the use of the house. And of this sort are Abbot and Covent, Prior and Covent, &c.

XLIV. Secular, are such as have not entred into Religion, as Bishop and his Chapter, Master of an Hospital and his Brethren, Guardian of a Chappel and his Chaplains, &c. Also Arch-Deacons, and the like.

XLV. Touching the Bishop and his Chapter (which make but one body) their Possessions are divided, so as the Bishop hath part by himself, and the Chapter the residue, which Chapter consisteth of a Dean as the chief, and Prebendaries or such like, who are most properly term'd the Chapter; and of these also the possessions are for the most part divided, the Dean having some part solely in the right of his Deanry, and the particular Prebendaries some other part in the right of their respective Prebends: the residue the Dean and Chapter have together; and every of them is to such purpose incorporate by himself.

XLVI. These spiritual Corporations are sometimes Pensative, sometimes Dative, perpetual or removable; some-

sometimes Elective, and have a Common Seal.

XLVII. To them also Parsonages may be appropriate by the Patron, Ordinary, and King, and Vicars endowed to serve the Cure. *Appropr: ation*

CHAP. II.

Of Possessions.

stat. 3 : 4 . 9 : 11

I. OF the Common Law there be two parts, the one concerneth Possessions, the other punishment of offences. *possion punishm: of offenc:*

II. A Possession is whatsoever may be enjoyed. *d: f:*

III. *The King shall have to his own use all the Possessions of a Fool natural, during his Ideocy.* *stat prer: 9 . 17 Ed: 3*

IV. When one hath the Possession of any thing to anothers use, this was accounted nothing, but as a matter in Conscience and Chancery. *stat 1 . R: 3: prer: 10 . 17 Ed: 3*

V. Sundry men possessing the same thing by purchase, are Joynt-tenants, or Tenants in common. *Joynt-ten: & in com:*

VI. Joynt-tenants which possess by the same Title.

VII. And here the Survivor shall have the whole in the same sort as he had his part, excepting onely present interests of the thing it self granted by him that dieth. *Survivo:*

VIII. Tenants in Common are they, which possess by several titles:

IX. To possessions this is general, that they may be granted. *50 Ed: 3 . 6 3 H: 4 . 13 El: 5 . 27 El: 4* *grant*

X. *Every grant, made by the King upon surmise or suit of the party, shall be taken most beneficially for the King, and against the party.* *Surmi: of ptie*

XI. *No grant of his is good, when it appeareth within the body of the Grant, that the King is deceived.* *d: c: t:*

XII. *His grant shall not inure to any other intent then that, which is precisely expressed within the grant.* *Inure*

XIII. A

Cestuy que vse: 1 R: 3: 1 . 19: H: 7: 15 . 27 H: 8: 1 . 27 H: 8: 16 . 4 H: 7: 17

11 Kgs grants prer: 15: 17 Ed: 2 . 1 H: 4: 6: 18 H: 6: 1 . 34 . 35: H: 8:

Infants grant void & voidable

XIII. A grant by an Infant under the age of 21. years, one out of his right mind, or compelled thereunto, either by *dures* of Imprisonment, or fear of some bodily hurt threatned, as loss of life and member, or though it be but of Imprisonment, may be avoyded at any time, if they deliver it with their hand.

XIV. But if they deliver it not with their hand, nothing at all passeth.

XV. So it is also of a grant made by one, that hath no understanding.

XVI. Yet grants of an *Infant*, in respect of having necessary things cannot be avoided.

XVII. Other grants of his, where himself hath likewise benefit, are only voydable.

Exchange

XVIII. To this place belongeth *Exchange*, which is a mutual grant of equal Interests, each in exchange of other.

Scripcon

XIX. Prescription is as available as any Grant.

XX. A possession is restrictive or absolute.

XXI. A restrictive possession is upon a limitation, or condition.

Limitacon

XXII. Upon a limitation, which ceaseth upon the doing, or not doing of something.

Condicon

XXIII. Upon condition, which is onely defeasible upon the doing, or not doing of some thing.

XXIV. Absolute which is neither upon limitation or condition.

CHAP. III.

Right, Titles, Deeds.

I. POssessions are in possession, or in an action.

II. In Possession, which one doth enjoy.

III. In action which one ought to enjoy, either in respect of a right or a title.

IV. Right, when wrong was done before.

V. Title

V. Title, when no wrong was done.

VI. Of things in action no ſtranger ſhall take advantage.

VII. Therefore things in action cannot be granted but to him that hath poſſeſſion, and that by Releaſe, Confirmation.

VIII. Releaſe is a paſſing of the Grantors intereſt.

IX. Confirmation is a ratifying of the Grantees poſſeſſion.

X. The grant of every thing in action, and of ſuch things in poſſeſſion as cannot paſs by the livery of the hand, muſt of neceſſity be by Deed.

XI. A Deed is a Writing ſealed and delivered, and belongeth always to him whoſe poſſeſſion is made by it.

XII. But a Writing read in another form to one that cannot read, is not his Deed at all, though he ſeal and deliver it.

XIII. A Deed, is a Deed Poll, or Indenture.

XIV. Poll, which is the onely Deed of the Grantor.

XV. Indenture, which is the natural Deed of both.

XVI. An Indenture barreth every of the parties from ſaying contrary to any thing therein contained.

XVII. Sometimes alſo bare acts work an eſtopple in like ſort.

CHAP. IV.

Hereditaments, Eſtates Terms.

I. A Poſſeſſion is an Hereditament or Chattel.

II. Hereditament is a poſſeſſion, which one may have an Eſtate in.

III. One born of parents out of the Kings allegiance is diſabled to enjoy any Hereditaments.

IV. *Therefore ſuch a one purchaſing any, it is the Kings*

V. An Eſtate is Particular, or an Inheritance.

VI. A Particular Eſtate is uncertain or certain.

VII. Uncertain, which is determinable at anothers pleaſure, as an Eſtate at ſufferance, and at will.

VIII. At ſufferance, when after lawful occupation, he continueth poſſeſſion without authority.

IX. At will, when an eſtate is made during pleaſure.

X. And this is according to the cuſtome, as a Copyholder; or at pleaſure otherwiſe, as a bare Tenant at will.

XI. Certain, which is not ſo determinable; and it is called a *Term*, whereupon may depend a Remainder of Reverſion.

XII. Remainder, is the reſidue of an eſtate, at the ſame time appointed over.

XIII. Reverſion, is the reſidue of an eſtate, not at the ſame time appointed over.

XIV. Terms are forfeited, by plucking the inheritance out of him that hath it.

XV. Terms may be ſurrendred, that is, to him that hath the next and higher eſtate.

XVI. A Term is for years, or for life.

XVII. A Term for life, is for his own life, or for anothers life.

XVIII. Where the Tenant for anothers life dies before *Ceſty que vie*, he that can firſt hap it, ſhall enjoy out the Term, and is called an *Occupant*.

XIX. The preſent eſtate for life is termed a *Freehold*, and may be ſo in deed, or in Law.

XX. In deed, when he is actually ſeiſed of it.

XXI. In Law, before his entry, when it is caſt upon him by courſe of Law.

XXII. The releaſe of an inheritance or of an eſtate for life, is not good to one that is but Tenant for years without privity.

XXIII. To theſe two eſtates a warranty doth belong, which is an aſſurance warranting ſuch an Eſtate.

XXIV. Every Exchange hath a warranty knit by Law.

CHAP.

CHAP. V.

Inheritance, Fee-simple, Dower, Tenancy by the Courtesie.

I. INheritance is an estate descendable to his Heirs that hath actual possession.

II. An Heir is the next or worthiest of whole blood, being also of blood to the first purchaser.

III. He that is begotten out of Marriage is called a Bastard, and is of blood to none, but in Law accounted *Nullius Filius*.

IV. A Bastard therefore cannot inherit.

V. But Marriage following after, giveth him the right of inheritance, if after the father's death he enter before his younger brother, born of the same father and mother within Espousals, and continue the possession all his life without interruption. Stat

VI. If the next be women in equal distance, as daughters, Sisters, Aunts, *&c.* they shall inherit alike, and are but as one heir.

VII. Where the general Entry of one is of the rest, if they list.

VIII. The inheritance that descendeth shall be charged with the deed of the Ancestor, binding himself and his heirs. Stat

IX. The Dying seized of the Inheritance and Freehold together, whereby the Land descends unto his heir, taketh away the Entry of every one that may have an Action. Stat

X. But claim upon the Land within a year before the death, or if they dare not upon the Land for fear of some bodily hurt, then as near the Land as they dare, saveth their entry. Stat

XI. A Fee-simple is a Fee-simple conditional or absolute.

XII. Con-

XII. Conditional is a fee-simple to one, and the Heirs of his body.

XIII. This estate before issue cannot be alienated, after issue had, becometh an absolute fee-simple.

XIV. But so, as if the issue fail before the alienation, the Donor shall have it.

XV. Hither belong Hereditaments given in Frank-marriage with ones kinswoman.

XVI. Absolute, is a fee-simple to one and his Heirs whatsoever.

XVII. This estate descending to Females, if one of them have Lands of the same Ancestor by Frank-marriage, she shall have no more, unless she be content that the value thereof be allowed to the other.

XVIII. To this place are to be referred Lands given to a Corporation, which go in perpetual succession.

XIX. Here, two special estates for life, *Dower*, and *Tenancie* by the courtesie of *England*, do arise after ones death that hath an Inheritance join'd with the freehold.

XX Howbeit, these estates must be of a fee-simple, or such an estate tail, as may go to the issue had between the Donees.

XXI. Dower is an estate, whereby the woman hath the thirds in severalty.

XXII. She must be nine years of age at the time of her husbands death, otherwise she shall not be endowed.

XXIII. Detaining of Deeds concerning Inheritance descended to the Heir, is a barr of her Dower.

XXIV. If the husband at the Church door (*ad ostium Ecclesiæ*,) or being Heir apparent, by his Fathers or Mothers consent (*ex assensu patris* or *matris*) presently upon affiance endow her of any certainty, as of the whole, moity, or less part, &c. this will barr her of her thirds, if she agree to it.

XXV. Tenancie by the courtesie of *England* is an estate, whereby of an actual possession the husband

that

that hath issue by her born alive, shall have the whole.

CHAP. VI.

Tenement, Advowson.

I. HEreditaments are Tenements or bare Hereditaments.

II. A Tenement is a possession holden, the Fee simple whereof, when he that hath it dieth without Heir, cometh to the Lord.

III. Of this sort are Lands and Advowsons.

IV. Land is a Tenement in Manual occupation.

V. Under the name of Land are comprehended, not only Gardens, Medows, Pastures, Woods, Rivers, *&c.* but also Messuages, Mills, Yards, Tofts, Castles, and the like.

VI. Churches and Church-yards belong to the Incumbent.

VII. Prescription here hath no force.

VIII. *All Land is holden of the King immediatly, or by means, himself not having any higher upon earth, of whom to hold.*

IX. *Escheats of all Cities appertain to the King.*

X. *All Mines of Gold and Silver, or wherein the Gold or Silver is of the greater value, are the Kings.*

XI. Amongst Coparceners, the eldest upon partition shall have the chief house.

XII. Seisin delivered of Land always passeth a Freehold.

XIII. Otherwise a Freehold of Land cannot pass, save by release and confirmation, where they are by way of enlarging an Estate.

XIV. They may also sometimes pass by Exchanges, Endowments, or Surrenders.

XV. An estate made within view of land is a good Livery of seisin, if the other enter in the Feoffors life time.

XVI. An Advowson is an interest of presenting to a Church.

CHAP.

CHAP. 7.

Diſtreſs, Seigniories, Fealty, Rent-ſervice, Homage, Suit of Court, Tenures, Relief, and Rent-charge.

I. BAre Hereditaments are thoſe, which are not holden, and concern the Land or the Perſon.

II. Thoſe that concern the Land are extinguiſhed, or gone for ever, when he that hath them, hath high and continuing an eſtate, as he hath the hereditaments.

III. Otherwiſe they are but ſuſpended, or gone for a time.

IV. Theſe are leviable by diſtreſs, or ſuch as cannot be diſtreined for.

V. Diſtreſs is a taking of Chattels, found upon the ſame Land, for ſatisfaction of Arrerages.

VI. *The King may diſtain in any other land of the ſame mans for his Service or Rent-charge.*

VII. The diſtreſs being put in ſome place, where the owner may lawfully come by them, as, if they be things that have life, to give them meat, &c. he that diſtraineth ſhall not be charged, what hurt ſoever they receive.

VIII. Bare hereditaments, that may be diſtrained for, are a Seigniory, or Rent-charge.

IX. Seigniories are Serviees, whereby Lands are holden.

X. Services are common to all certain eſtates, or proper to inheritances.

XI. Common, as Fealty, and Rent-ſervice, whereof Fealty is incident to every ſuch eſtate.

XII. And therefore the Seigniory or Tenancy being altered it muſt be done anew.

XIII. All other (both common and proper) grow by Reſervation.

XIV. Fealty is an Oath to be faithfull to the Lord for the Tenements.

XV. Rent-ſervice, is a Rent to be paid to the Lord at certain ſet times.

XVI. And

XVI. And to this place we may refer all ſervices that lie in Feſance.

XVII. Of which kind two amongſt the reſt are ſpecially to be conſidered, *viz.* Frank-Almoign, and Divine Service.

XVIII. Frank-Almoigne, is when a man of the Church holdeth freely in Alms, for which he is bound to ſay Prayers.

XIX. But becauſe the Prayers are not limited in certain, he neither ſhall do Fealty, nor is ſubject to diſtreſs.

XX. The Lord muſt warrant ſuch a Tenant againſt himſelf and his heirs, and ſave him harmleſs of all manner of all ſervices againſt the Lords above.

XXI. Divine Service is a ſpiritual kind of ſervice limited in certain.

XXII. Theſe are the ſervices whereby every certain eſtate may be holden.

XXIII. There follow thoſe proper to Inheritances, the Grantee whereof ſhall hold of the Grantor by ſuch ſervices, as he holdeth over, if other ſervices be not reſerved.

XXIV. Or the Grantor may appoint him to hold of the next Lord.

XXV. A Meſn muſt acquit the Tenant of all manner of ſervices againſt the Lords Paramount.

XXVI. But Donors in Frankmarriage cannot hold but by Fealty, and that of the Donor, until the Fourth degree be paſt, who muſt alſo acquit them of all manner of ſervices.

XXVII. *One that holdeth of the King as of his perſon, alienating the Free hold without licence, forfeiteth the Land.*

XXVIII. Services proper to Eſtates of Inheritance are Homage and Suit of Court.

XXIX. Homage is an Oath of fidelity acknowledging himſelf to be the Lords man, In the doing whereof the

the Tenent muſt be ungirt, uncovered, kneel upon both knees, and hold both his hands together between the Lords hands, ſitting before him.

XXX This is to be done to the Lord himſelf, and but once during the Tenants life.

XXXI. *The Kings Chamberlain ſhall take homage for him.*

XXXII. When an Inheritance deſcendeth to Coperceners, the eldeſt onely ſhall do Homage.

XXXIII. *But if they hold of the King, all of them muſt do it.*

XXXIV. When one and his Anceſtors, whoſe Heir he is, have held by Homage of a Lord and his Anceſtors whoſe Heir the Lord is, time out of mind, and the Lord hath received Homage, that bindeth him to warrant and acquit the Tenant.

XXXV. Suit of Court is a ſervice by coming to the Lords Court: and here Land in the Lords hands (whereof ſeveral men hold by Suit of Court) is termed a *Mannor*, but the Land conſidered apart from the ſervice is termed *Demeſnes*.

XXXVI. The particular kinds of ſervices (whereby Lands of Inheritance are diſtinguiſhed) are Soccage and Knight-ſervice.

XXXVII. Both draw unto them certain commodities to the Lord, partly in the Tenants life, and partly after his death.

XXXVIII. That in his life is reaſonable *Aide*, or Portion towards the making of the Lords eldeſt Son a Knight; and towards the marrying of his eldeſt Daughter.

XXXIX. The other after his death, are wardſhip and relief.

XL. Wardſhip is the cuſtody of the Body and Land of the Heir within age, which ſhall be till fourteen of a woman.

XLI. Re-

XLI. Relief is a Portion to be paid by the Heir to the Lord. 2 f.

XLII. Soccage is tenure to be done out of Ward.

XLIII. Where the next of the kin, to whom the inheritance cannot descend, shall have the Heirs wardship till fourteen to the Heirs own use. Stat

XLIV. Here, for Relief the Lord shall have presently so much as one years rent amounts unto.

XLV. *Tenure by Soccage in Chief giveth the King primer-seisin, or the value of that Land by a year, if the Heir be of the age of fourteen years at his Ancestors death.*

XLVI. Knight Service is a service touching War to be done by the body of a man. 2 f.

XLVII. To all Knight service Homage is incident.

XLVIII. Here the Wardship is the Lords to his own use, and that till 21. of an Heir male. Stat

XLIX. The Wife shall be barred of her Dower, so long as she detained the Heir from him.

L. Wardship of the body giveth the Wards marriage to the Lord. Stat

LI. If one hold sundry Lands of divers Lords, the wardship of body goeth to the Lord of that Land which the Tenant held first; and this is termed, Tenure by priority.

LII. *The King shall have the Wardship of the body, though the tenure of him be by Posteriority.*

LIII. The eldest child, being Heir apparent to his Father, shall not be in ward for his body during his Fathers life.

LIV. *Tenure by Knight service in chief, giveth to the King the Wardship of all other Lands also.*

LV. *It giveth him likewise Primer seisin, or the value of them all by half a year, if the Heir were in Ward; by a whole year, if he were not: which Primer seisin must be paid, and Relief also.*

LVI. Re-

LVI. Relief, for Land Holden by Knight-ſervice, amounteth to an *C. s.* for a whole Knights fee, to a *C.* Marks for a Barony, and to a *C.* Pounds for an Earldome.

LVII. If the heir be within age at the Tenants death no relief ſhall be paid to the Lords that are to have the Wardſhip.

LVIII. *Grand Serjeancy, viz. Tenure of the King's Perſon, to do to him a more ſpecial ſervice whatſoever, by the perſon of a man, is a ſpecial Knight-ſervice in chief, where the King in ſtead of relief ſhall have the value of the Land by a year.*

LIX. Rent charge is a Rent with Liberty to diſtrain.

CHAP. VIII.

Rent Seck Common.

I. BAre Hereditaments concerning land (for which no diſtreſs can be taken) are a Rent Seck, and Common.

II. A Rent Seck is a Rent without liberty to diſtrain.

III. When a rent is granted for equality of Partition amongſt Coperceners, this rent may be diſtrained for, though no ſuch Liberty be granted.

IV. The grant of a Seigniory, Rent charge, and Rent Seck, as alſo of a Remainder or Reverſion of any of theſe, or of the land it ſelf, is nothing worth without Attornment, *viz.* agreement of the Tenant that preſently muſt be charged.

V. In the grant of a Reverſion depending upon a Freehold, the Attornment of the Freeholder is ſufficient, though he be not the Tenant that preſently muſt be charged.

VI. Common is a profit to be taken in anothers land.

CHAP.

CHAP. IX.
Villenage, Annuity, Corody, Office.

I. BAre Hereditaments that concern the person, are meerly of the person himself, or by reason of the person.

II. Of the first sort are Villeins.

III. A Villein is such a servant, as himself and whatsoever he possesseth is the Lords, if he claim it.

IV. *The Lord cannot seize his Villein in the Kings presence.*

V. The children of a Villein are also Villeins.

VI. Villenage beginneth by confessing a mans self to be one in a Court of Record.

VII. A Villein is manumitted or set free, when the Lord enableth him to possess any thing against himself.

VIII. Those by reason of the person are Annuities and Corrodies, or Offices.

IX. Annuity is a yearly rent to be had of the person of the Grantor.

X. Corody is a Portion for ones sustenance.

XI. Office is a duty of attendance upon a charge.

CHAP. X.
Franchises.

I. BEsides the Hereditaments already handled, there be certain other derived from the Kings Prerogative, which are termed Franchises.

II. A Franchise is a Royal Priviledge in the hand of a Subject.

III. It may be forfeited by misusing of it.

IV. The kinds of Franchises are divers, and almost infinite.

V. Of such sort are Warren, Markets, Fairs, Toll of every buyer for things he buyeth there, not being for his

own expences, and whatsoever liberties or commodities else, that (created at first by the Kings special grant, or of their own nature belonging to him) are given to common persons to have any manner of estate in.

CHAP. XI.

Chattels, Real and Personal, Testament, Bailment, Contracts, Actions, Arbitrement.

I. Such then is the nature of an hereditament in his sundry sorts and kinds.

II. Chattels are possessions, wherein there cannot be several estates.

III. All ones Chattels, whether in possession, or that any is indebted to him in, may be given away, or devised by his Testament.

IV. Testament is the appointment of some person to administer them for him after his death, who therefore is called an Executor.

V. The Executors must prove the Will (to be a true one) in the Spiritual Court, and be sworn to see it performed.

VI. If many Executors be made, and one refuse, yet he may administer at his pleasure.

VII. But an Executor once administring, can never refuse after.

VIII. Executors must answer all certain duties of the Testator.

IX. But so, as duties that grow by specialties are to be answered before other duties, and legacies to be last of all delivered.

X. In these devises, the Testators intent (standing with the rules of Law) shall be taken.

XI. The Executor of an Executor is Executor to the first Testator.

XII. If no Will be made, the Ordinary shall administer all the Chattels that were in his possession.

XIII. B

XIII. But whether any will be made or no, his wife and such children as are not advanced by him in his life shall have a part to their own use, *viz.* one third of all (after the debts paid) to his wife; and another third part to his children: *This seems to be the ancient Common Law by Mag. charta, cap.* 18. *See F.N.Br.* 122. *l.*

XIV. Chattels are real, or personal.

XV. Real, as terms for years, and Wardship.

XVI. Personal, as Plate, Jewels, Gold, Silver, Implements of Houshold, Cattel, and all goods and moveables whatsoever, corn sown upon the ground, &c.

XVII. The owner-ship of a Chattel personal is termed a property, which of wild beasts cannot be in any, or after they are made tame, longer then they remain in ones possession.

XVIII. *Treasure in the earth, and* Treasure Trove, *or Coin being found is the Kings.*

XIX. *Cattel also, that stray into anothers land, are the Kings after a year and a day, if being proclaimed at the Market in two several Towns next adjoyning, the owner do not claim them.*

XX. *Goods wrecked are also his.* — stat

XXI. *The King being Tenant in Common of an intire Chattel personal shall have the whole.*

XXII. Goods, that belong to an Alien enemy, any body may seize to his own use.

XXIII. The taking of goods by an Alien enemy in Attail, devesteth the property from the owner, if he come not before Sun set to claim them.

XXIV. Church-wardens are enabled to have goods to the behoof of the Parish.

XXV. To Chattels personal, Bailment and Contract do belong.

XXVI. Bailment is a delivery of goods in possession, and is either to keep, or to imploy.

XXVII. To keep, when onely the Custody is committed

mitted to him, and as a ſimple Bailment or pledge.

XXVIII. A ſimple Bailment, when he receiveth them to keep for another; whether it be for the Bailer to re-deliver him again, or for a ſtranger to bail them over to him.

XXIX. A Pledg is when he received them in aſſurance for another thing had of him at the time.

XXX. The Bailment of goods to employ is, when the Bailee hath the things themſelves to uſe to anothers profit.

XXXI. Contract is a mutual agreement for the very property of perſonal things.

XXXII. Here, the duty growing upon it cannot be apportioned.

XXXIII. Of this kind of contracts are buying and ſelling, borrowing and lending, and ſuch like.

XXXIV. The ſale of another mans goods in Market overt, altereth the property, if toll be paid for them.

XXXV. Hither belong certain (as it were) Contracts in Law, though not ariſing from the ſpecial agreement of the parties: as Trover and converſion, &c.

XXXVI. Theſe are the things that belong to Chattels perſonal in general; for the intereſt of perſonal things uncertain, Accord and Abitrement lie.

XXXVII. Accord is an agreement between the parties themſelves upon a ſatisfaction executed.

XXXVIII. Arbitrement is an award of ſatisfaction by othe s whom they chooſe to judg between them.

XXXIX. The award of a perſonal Chattel altereth the property thereof.

CHAP. XII.

Treſpaſs upon the Caſe.

I. WE have hitherto ſpoken of poſſeſſions, (being the firſt and hardeſt part of the Law;) The other

other remaineth, which miniſtreth juſtice in the puniſhment of offences.

II. An offence is the doing of any wrong, and it is a wrong without force, or to the which force is coupled. def.

III. In thoſe of the firſt kind, the offender is to be amerced, *viz.* to pay a petty ſum of money to the King; and if he be a Peer of the Realm, then C. S.

IV. The Kings wife ſhall never be amerced.

V. Offences without force, are Treſpaſſes upon the caſe, or Real wrongs.

VI. Treſpaſs upon the caſe is ſuch an offence whereby any thing is endamaged; and it is a miſuſer, or deceit and conſpiracy. diction

VII. Miſuſer, when by meer wrong it is endamaged. def:

VIII. Of this kind there be many, and thoſe of divers ſorts: as if a man maliciouſly utter any falſe ſlander, to the endangering of one in Law.

IX. The touching of him with ſome heinous crime.

X. The impairing his trade of life.

XI. If one having another mans goods, convert them to his own uſe.

XII. If a Sheriff ſuffer one in execution for debt to go at large.

XIII. If a Smith prick my horſe, or kill him in cure.

XIV. If being committed to the Gaol, the Gaoler of malice puts upon me ſo many Irons, or otherwiſe uſeth me ſo hardly, that I become lame thereby, *&c.*

XV. But two above the reſt do here require more eſpecial conſideration, *viz.* Diſturbance and Nuſance.

XVI. Diſturbance is the hindring of that which in right belongeth to one to do. def.

XVII. Nuſance is annoyance done to ones Hereditament. def:

XVIII. All manner of Nuſances are to be removed, and common Nuſances any man may pull down.

XIX. Deceit is when the damage groweth by an under slight; As if in play one win anothers money by false dice or if he that selleth any thing, do upon the sale, warrant it to be thus and thus, whereby the other is deceived.

XX. Conspiracy is, where two or more conspire to do any wrong, or the like.

XXI. There are certain other offences against the Law, which are the nature of trespasses upon the case, and by the Kings prerogative punishable like to them.

XXII. Of this sort are Nonsuit in an action, fault in the Original Writ, (or by the Sheriff) in the return of a Writ, making default when he should appear, and whatsoever other offences (not being with force and arms) which offer no direct injury to a common person.

CHAP. XIII.

Discontinuance, Desseisin, Usurpation, Intrusion, Abatement.

I. Hitherto of Trespasses upon the case: A real wrong is that which medleth with the Freehold otherwise then it ought.

II. A real wrong is a discontinuance, or an Ouster.

III. Discontinuance is when he that hath an estate Tail, or a Fee-simple in an others right, maketh a large estate of the Land then he may.

IV. Warranty of an estate of Inheritance, or for life descending upon him, that ought to have such an estate maketh a discontinuance.

V. Discontinuance taketh away the entry of those that come to have title after the death of the discontinuer.

VI If he (whose entry is barred by a descent or discontinuance) have the Free-hold cast upon him by a new title, he shall be in of his ancient title, which is termed a *Remitter*.

VII. Ouster is, when the Free-holder is put out.

VIII. Th

VIII. This Ouſter is of a Freehold in deed, or in law.

IX. Of the firſt ſort are Diſſeiſin and Uſurpation.

X. Diſſeiſin is the Ouſting of him that hath freehold in deed, by putting or holding him out of the land. Def

XI. This may be alſo of a rent or other profit out of land, by diſturbing him in the means of coming to it; as

XII. In every rent Encloſer and Foreſtaller.

XIII. Encloſer is, when the tenant incloſeth the land, ſo that he cannot come to diſtrain or demand it. Def

XIV. Foreſtaller is, when the tenant beſetteth the way with force and arms upon his coming. Def

XV. Of this nature is the menacing of him, when for doubt of ſome bodily hurt he dare not come.

XVI. In a rent ſervice, and rent charge, Reſcous and Replevin.

XVII. Reſcous, when either the party having diſtrained, the diſtreſs is reſcued; or being upon the land to diſtrain, cannot be ſuffered to do it. Def.

XVIII. Replevin is, when an action of Replevin is brought upon a diſtreſs taken. Def

XIX. In a rent charge, and rent ſeck, Denier.

XX. Denier is, when the rent (being demanded upon the land) is not paid. Def.

XXI. Uſurpation is, when the Church becometh full by the preſentment of a wrong Patron, and the Inſtitution of the party preſented by the Ordinary. Def. Stat

XXII. *But againſt the King, Induction onely doth it.*

XXIII. Of the ſecond ſort are Intruſion and Abatement, being of a freehold in Law.

XXIV. Intruſion, which is after the death of the tenant for life. Def.

XXV. Abatement, which is after the death of one that hath the Inheritance. Def.

CHAP. XIV.

Treſpaſs, Menaces, Aſſault, falſe Impriſonment, Battery, Mayhem, Rape.

I. Such is the nature of an offence without force.

II. An Offence with force is a Treſpaſs or an Offence againſt the Crown.

III. Treſpaſs is a criminal Offence puniſhable by a Fine to the King.

IV. For this the party muſt be impriſoned until he do compound.

V. Treſpaſſes touch Poſſeſſions, or the perſon.

VI. Poſſeſſions, when the wrong is done in them, namely, in Goods, or Lands.

VII. Treſpaſs in Goods is the wrongfull taking of them with pretence of Title.

VIII. And therefore ſuch a Treſpaſs altereth the property of the Goods.

IX. Treſpaſs in Land is, when the Treſpaſs is done upon the actual poſſeſſion thereof.

X. Beaſts and other Chattels may be diſtrained by him that hath damage by them.

XI. Hither belongeth Ejectment, when a Termer for years of Land is ouſted.

XII. *Here the King having poſſeſſion none can put him out.*

XIII. Treſpaſſes to the perſon, are with pretence of violence, or violence in deed.

XIV. Pretence of violence, as Menaces and Aſſaults.

XV. Menaces are threatning words of beating one, or ſuch like, through fear whereof ones buſineſs is foreſlowed.

XVI. Aſſault is an unlawful ſetting upon ones perſon.

XVII. Hither belong, lying in wait, beſetting his manſion-houſe, and not ſuffering his ſervants to go in and out, *&c.*

XVIII. Vio-

XVIII. Violence in deed is false imprisonment, or bodily hurt.

XIX. False imprisonment is an unlawfull restraint of liberty.

XX. Bodily hurts are either outward violences only, or Rape.

XXI. Outward violences onely are Battery and Mayhem.

XXII. Battery is the wrongful beating of one.

XXIII. Mayhem is the wrongful spoiling of a member defensive in fight.

XXIV. Rape is the carnal abusing of a woman against her will.

CHAP. XV.

Offences against the Peace.

BEsides these Offences (being for the most part) twixt party and party, there are other Offences to the damage of the publike in the nature of Trespasses, and are termed *Contempts*.

II. These Offences are punished not onely by fine, but sometimes by corporal pain, and sometimes by loss of member.

III As the Common wealth is a Body politick, which consists of the King as the Head, and of his Subjects as the Members thereof; so are these Offences to be distributed.

IV. Publick Offences against the King are, to disobey the Kings Command by his Writ, or Proclamation, to disobey any thing ordained by Statute, *&c.*

V. And therefore the Sheriff that serves not the first Writ, makes a contempt.

VI. Publick Offences to the Body of the Common-wealth, are first those which trench against the domestical safety thereof, as against the *heart* of the Common-wealth.

VII. Which

VII. Which ſafety conſiſts in this, that there be *pax domi*; and therefore here the offences are Rebellions, Inſurrections, Riots, Routs, unlawful Aſſemblies, breach of the Peace and good Behaviour, falſe News, Barratry, Eveſ-dropping, &c. Alſo all treſpaſſes with force, which may be proſecuted by Indictment as well as by the ſuit of the party grieved.

VIII. An unlawful Aſſembly is, when above the number of two aſſemble together, with purpoſe to do ſome unlawful act.

IX. Rout, when they ſet forwards to do it.

X. Riot, when they do it in deed.

XI. In the ſecond place come the offences that are againſt the ſtrength of the Realm, and the defence thereof againſt foreign enemies, as againſt the hands and arms of the Commonwealth.

XII. Of this ſort are theſe; to ſend victual or armour beyond ſea, in comfort and aid of the Kings enemies; to go beyond ſea, without the Kings licenſe, whereby the King and the Realm may be enfeebled, &c.

CHAP. XVI.
Againſt Juſtice.

I. THe third ſort are offences againſt the Juſtice of the Realm, as againſt the thighs and legs thereof; as

II. Judges which delay or pervert Juſtice.

III. Officers negligent or corrupt, who do not execute their Offices as they ought to do.

IV. Gaolers, who by fear of puniſhment cauſe their priſoners to become provers to accuſe others, or teach the Lay-people in their cuſtody to read for the ſalvation of their lives.

V. Enditors, who give warning to Enditees, whereby the Council of the King and the Juſtices is diſcovered.

VI. He

VI. He that by negligence or voluntarily ſuffers one under arreſt to go at large.

VII. And here if the arreſt be for felony, ſuch voluntary eſcape is for felony.

VIII. Hither alſo all manner of extortion in Officers is to be referred.

IX. A Juror that appears, and is challenged, and afterwards, when he is found indifferent, and is called to be ſworn makes default: He ſhall be fined to the value of his land by the year.

X. All force againſt the Juſtice of the Realm.

XI. The breaking of Priſon: and here, if it be by the party himſelf, it is felony.

XII. Reſcous, when a ſtranger, or the party himſelf diſturbes the arreſting of a felon or other.

XIII. Affrayes in diſturbance of Juſtice. As

XIV. Such as come forcible into the Kings Court in affray of the peace, ſo as the Jurors dare not give their Verdict.

XV. Such as are evil people to beat the people of the Court, Jurors of Enqueſt, or any other.

XVI. To go armed in the Kings Palace.

XVII. He that ſtrikes a man in *Weſtminſter*-Hall ſhall loſe his right-hand.

XVIII. He that ſtrikes a Juror in the preſence of the Juſtice ſhall have the ſame puniſhment, and beſides ſhall ſuffer perpetual impriſonment.

XIX. Conventicles, which comprehend conſpirators and confederators.

XX. Such as receive people to their avowments, to maintain them right or wrong.

XXI. Maintainance, when a man maintains a ſuit in Law.

XXII. Champerty, when he maintains it, to have part of the thing ſued for.

XXIII. Offences in favour of malefactors, as

XXIV. Miſ-

XXIV. Misprision, *viz.* the concealment of Treason or Felony, whereof the first is punishable by perpetual Imprisonment.

XXV. Theft-boot, when a man takes his goods from a Thief with purpose to favour and maintain him: The punishment whereof is ransome and imprisonment.

XXVI. Not assisting the Sheriff, Constable, or other Officer.

XXVII. Contempt of Justice, as

XXVIII. Such as flie for fear, when Treason or Felony is done by any.

XXIX. Such as in case of Treason or Felony tarry the Exigent.

XXX. Such as suffer themselves to be out-lawed.

XXXI. The King may imprison the body of him that is out-lawed, until he purchase his Charter of pardon.

XXXII. Perjury, and subornation of perjury.

XXXIII. Forgery. Embracery

XXXIV. All other falshood in matter of Justice.

CHAP. XVII.

Against the Wealth of the Nation.

I. THe fourth kind of publick Offences, are such as are committed against the flourishing estate of the Realm, as against the Colour and sanguine Complexion thereof.

II. And this in divers manners, as well in matter of Traffick, buying, selling, and the like, as otherwise.

III. In matter of Traffick, buying and selling, *&c.* as

IV. Practices, which tend to make the commodities of the Realm more dear, as,

V. To transport the commodities thereof without the Kings licence, or paying his Customes.

VI. Forestallers, Regrators, and Ingrossers, under which all Monopolies are comprehended.

VII. Conspiracies of Merchants, Tradesmen, and the

the like, who by Combination amongſt themſelves, put certain prizes upon Commodities, which are to be ſold.

VIII. Falſe Weights and Meaſures.

IX. Out of the courſe of Traffick: As

X. Things which tend to the deſtruction of the commodities of the Realm, as

XI. Depopulation of Towns, and the like.

XII. Burning of a dwelling houſe, or of a Barn neer adjoyning thereunto.

XIII. Burning Corn in a Barn, or the like.

CHAP. XVIII.

Publick Nuſances.

I. IN the ſixth and laſt place, are ſuch Offences to be ranked, as are committed againſt the ſafe paſſages and wayes of the Country, as againſt the feet and toes of the Common-wealth, as

II. Bridges, Cawſeys, High-wayes, Streets, &c. broken, or out of repair.

III. To this place common Nuſances, Purpreſtures, *&c.* may be referred.

IV. Such Nuſances any man may abate.

V And as to Nuſances, there is a writ in the Regiſter.

VI. Where a Lazer or Leper will go in publick, the Writ *de leproſo amovendo* lies to remove him out of the company of men to ſome ſolitary place.

CHAP. XIX.

Felony, Fealty, Manſlaughter, Murther, Burglary, Robbery.

I. THus far of Treſpaſs, it remaineth to ſpeak of Offences againſt the Crown, which are criminal Offences puniſhable by death.

II. *Here alſo all the Offendors both Hereditaments and Chattels, not onely in poſſeſſion, but ſuch alſo as he hath but a Right to, are forfeited to the King*, viz.

III *Here-*

III. *Hereditaments from the time of the offence, and chattels from the time of the attainder onely.*

Stab. IV. In these and all other forfeitures, the Town is chargeable with the goods.

V. The blood also here corrupted.

Stab. VI. The wife loseth her Dower.

VII. *Those that flie for fear of the offence forfeit their chattels to the King.*

VIII. Accessories after the fact, viz. writing, maintainers, and such as voluntarily suffer one arrested to escape, are guilty of the same offence.

IX *Concealing the offence forfeiteth chattels, and hereditaments also during life.*

X. Offences against the Crown are felony, or High Treason.

XI. Felony is an offence of the Crown not immediately bent against the State.

Stab. XII. Here, the forfeiture of the offendors inheritance is given to the Lord.

XIII. *The King is also utterly to waste the Inheritance.*

XIV. Felony is bare felony, or petty treason.

XV. Bare felony is a felony of the lowest nature, and is punishable by hanging.

XVI. This is single or mixt.

XVII. Single, as stealth and man-slaughter.

Stab. XVIII. Stealth is the wrongfull taking of goods without pretence of title.

XIX. Inne-keepers must answer for goods of their guests stoln.

XX. *Goods confiscated, which, the thief attainted for stealing another thing, disclaimeth to have any property in, and waifes, viz. which a thief waifeth, are the Kings, if he seize them before the party from whom they were stoln.*

Stab XXI. But if the party from whom they are stoln seize them first, or doing his diligence to apprehend the thief

thief, convict him afterwards, upon an appeal, he shall have his goods again.

XXII. The stealing of goods which exceed not the value of 12 *d.* (termed petty Larceny) doth onely forfeit Chattels.

XXIII. Man-slaughter is the killing of any person born into the world.

XXIV. But if one live a year after the act committed which was the cause of his death, it is not felony in him that did the act.

XXV. The killing of one by chance in doing a lawful act, or in his own defence, flying as far as he may to save his life, forfeiteth onely chattels.

XXVI. But the killing of one that attempteth to rob him, (whether upon the high-way, or when men come to his house, and compass it about, to burn it, though they do not burn it, whereupon he issueth out and killeth one of them) is neither felony, nor causeth any forfeiture at all.

XVII. *Any unreasonable thing killing a man, it, and every thing moving with it, is forfeit to the King; and these are termed* Deodands.

XXVIII. Man-slaughter is Chance-medly, or Murder.

XXIX. Chance-medly is Man-slaughter without former malice.

XXX. Murder is Man-slaughter upon former malice.

XXXI. He that murdereth himself (we call him *Felo de se*) doth onely forfeit his chattels.

XXXII. Mixt felony is that kind of bare felony which riseth from the former, and it is Robbery or Burglary.

XXXIII. Robbery is stealth from ones person by assault in the High-ways.

XXXIV. Burglary is the night-breaking of an house

house with an intent to steal or kill, though none be killed, nor any thing stoln.

CHAP. XX.

Petty-Treason.

I. THus much of bare Felony: Petty-treason is a Felony of an higher nature then bare Felony is, the punishment whereof is burning.

II. This is against mortal Creatures, or against God.

III. Against mortal Creatures, as Petty-treason (properly so called) and Sodomy.

IV. Petty-treason (properly so called) is the killing of any to whom private obedience is due; as one's Master, Mistris, Husband, &c. for which (in stead of burning) a man shall be drawn and hanged.

V. Sodomy is a carnal copulation against nature, *viz.* of a man or woman in the same sex, or of either of them with beasts.

VI. Against God, is that which is immediately bent against his Majesty, as Heresie and Sorcery.

VII. Heresie is a presumptuous oppugning of an Article of Faith.

VIII. In case of Heresie, the party, before he can be burnt, must be convict in a Provincial Synod, and after abjuration make a relapse into the same, or some other Heresie.

IX. Sorcery is a consulting with Devils, and containeth under it, Conjuring, Necromancy, and such like.

CHAP. XXI.

High Treason.

I. HIgh Treason is an offence of the Crown directly bent against the State.

II. Also to kill the Chancellor, Treasurer, a Justice of either Bench, a Justice in Eyre, of Assize, or Oyer and Terminer, being in their places, and doing their Offices, is High Treason.

III. Here

III. Here the punishment is, by drawing, hanging, and quartering, for a man; and drawing and hanging, a woman.

CHAP. XXII.

Courts of Record, Court Baron, County Court.

I. THus we have gone through both the parts of the Law; there remaineth yet one general and common Affection, scattered throughout the whole Law, (as the blood is through the body) which we call *Action*.

II. Action is the handling of a cause in controversie before certain Judges, who (in respect of the place where they are set to do justice) are commonly called a *Court*.

III. Of all apparent faults proceeding from the Action, the Court must take notice.

IV. Every Court hath power to award so th precepts; and if the precept be not served, another of the like nature shall go forth, until it be served.

V. To every Court do belong Clerks and Officers.

VI. A Clerk is he that serveth for things to be done in Court.

VII. Any errour that appeareth to the Court to be the Clerks mistaking, may be amended at any time.

VIII. Officers are those who are to serve the Courts precepts, and to certifie the Court thereof.

IX. Courts are Courts of Record, or Court Barons.

X. Of Record, which are the Kings Courts.

XI. These have such credit, that no averment can be taken against any thing there entred or done.

XII. Things also that cannot be granted but by Deed, pass here by matter of Record.

XIII. *The King taketh hereditaments by matter of Record onely.*

XIV. Villenage beginneth onely by confessing a mans self to be one in a Court of Record.

XV. Duties of the Teſtator growing by Record, muſt be anſwered by Executors before other duties. *See Bankrupts* 34.

XVI. Courts of Record are the Parliament, or Courts that have ordinary Juriſdiction.

XVII. The Parliament is a Court of the King, Nobility, and Commons aſſembled, having an abſolute power in all cauſes.

XVIII. *Statutes of reſtraint bind not the King, unleſs they concern the Common-wealth, or he be ſpecially named.*

XIX. *He may licenſe things forbidden by the Statutes.*

XX. *But where the Statute ſaith his licenſe ſhall be void, there it muſt have a clauſe of* Non obſtante, viz. *this clauſe, Notwithſtanding any Statute, &c.*

XXI. Courts of Record which have ordinary Juriſdiction, are either general, whoſe Juriſdiction extends throughout the Realm; or but within ſome County.

XXII. The former are thoſe that are holden in *Term* time onely, the whole year having four Terms, viz. Michaelmas, and Hilary Term, Eaſter, and Trinity Term, and every Term ſeveral days of Return.

XXIII. Michaelmas Term (beginning the 10. of *October*, and ending the 28. of *November*,) hath eight Returns; *Octabis Michaelis, Quindena Michaelis, Tres Michaelis, Menſe Michaelis, Craſtino animarum, Craſtino Martini, Octabis Martini, & Quindena Martini.*

XXIV. Hilary Term (beginning the 23. day of *January*, and ending the 12. of *February*,) hath four Returns; *Octabis Hilarii, Quindena Hilarii, Craſtino Purificationis, & Octabis Purificationis.*

XXV. Eaſter Term (beginning 17. days after Eaſter, and ending the Munday next after Aſcenſion day,) hath five Returns; *Quindena Paſchæ, Tres Paſchæ, Menſe Paſchæ, Quinque Paſchæ, & Craſtino Aſcentionis.*

XXVI. Trinity Term (beginning 12. days after Whitſunday, and continuing 19 days,) hath five Returns

turns; *Octabis Trin. Quind. Trin. Crastino, Johannis Baptistæ, Octab. Johannis Baptistæ, Quindena Johannis Baptistæ.*

XXVII. To these Courts belongeth the power of sending forth Writs.

XXVIII. A Writ is a Latine Letter of the Kings in Parchment, sealed with his Seal.

XXIX. All Writs have a salutation, *Rex*, to such an one *salutem*; and a conclusion expressing the place, as *apud Westmonasterium, &c.* and the time (both day and year) of making it; if it be returnable, the day of the return is also appointed in it.

XXX. The third Writ (termed the *Pluris*) not served, is a contempt.

XXXI. And therefore the third Writ hath always this clause in it, *vel causam nobis significes*; so may the second (termed the *Alias*) also have, if the Plaintiff will.

XXXII. The Officer of these higher Courts is the Sheriff, to whom is committed the custody of the County.

XXXIII. For matters spiritual, the Ordinary is their Officer.

XXXIV. These general Courts are the Chancery, and two Benches, the Kings Bench, and Common-place.

XXXV. Chancery, which dealeth in suits concerning the King.

XXXVI. Here the Judge is the Chancellor, having the Custody of the great Seal of *England*, under which pass all suits out of the Chancery with *Teste meipso.*

XXXVII. *The Kings Grants are also entred of Record in this Court.*

XXXVIII. *Such Grants are effectual to pass a freehold from the King, without any Livery.*

XXXIX. *And being Matters of Record, they take*

effect from the time of the Date..

XL. In default of a Chancellour, the Lord Keeper of the great Seal hath his Authority.

XLI. The Keeper (or Master) of the Rolls, is an assistant to his Court.

XLII. In the Kings Bench and Common place, the Judges are one Chief Justice, and three (and sometimes more) other Justices.

XLIII. The *Teste* of their writ is *Teste Johanne Popham*, the Chief Justice for the time being.

XLIV. The Kings Bench is that which dealeth properly with pleas of the Crown.

XLV. The Common place, which dealeth properly with Common Pleas.

XLVI. *The King hath a proper Court of this kind for all things touching his Revenues, called the* Exchequer.

XLVII. The Judges whereof are called Barons, being one chief Baron, and three other.

XLVIII. And this also hath a Court of Chancery before the Chancellor and Barons of the Exchequer, called the Exchequer-chamber.

XLIX. The Escheater here is a special Officer, and hath a kind of a Court for finding out of the Kings title to lands, tenements, and other things.

L. Those Courts, which deal but within some County, are the Sheriffs Turn, and the Coroners Court.

LI. The Sheriffs Turn is a Court of Record for offences which are common grievances.

LII. Whereunto every man of the age of 12. years and upwards (being within the Precinct) oweth suit; and must be there sworn to the Kings allegeance.

LIII. But Peers of the Realm are excepted.

LIV. The offendor here shall be amerced, and distrained for that amerciament.

LV. The Coroners Court, is a Court for matters of the

the Crown, as Battery, Mayhem, Rape, Murder, &c.

LVI. Upon juſt exception to the Sheriff, proceſs out of the higher Courts ſhall be directed to the Coroners.

LVII. *The Steward and Marſhal of the Kings houſe have a Court for all perſonal Actions, and pleas of the Crown ariſing there.*

LVIII. By reaſon of certain Franchiſes, grow two other Courts of Record, which deal within ſome certain Precinct, *viz.* a Leet, and a Court of Pipowders.

LIX. A Leet is a Court of Record, having the ſame Juriſdiction within an hundred, or ſome leſs precinct, which the Sheriffs turn hath in the County, the profit thereof being to a common perſon.

LX. A Court of Pipowders is a Court of Record, incident to Faires and Markets, for all Actions ariſing there, and the ſuit muſt at the ſame time be commenced.

LXI. *The King (by Commiſſion under his Letters Patents) may erect other Courts at his pleaſure.*

LXII. Such were Juſtices in *Eyre*, and ſuch are Courts of Record in Corporations, and other places, by ſpecial Charter.

LXIII. Theſe are the Courts of Record: a Court Baron is the Court of a common perſon.

LXIV. This Court is for perſonal accompts under forty ſhillings.

LXV. Theſe cannot be kept oftner then every three weeks.

LXVI. The proceſs here is by precept to the Bailiff.

LXVII. The Suitors are the Judges.

LXVIII. A Court-Baron is the Lords, or a County-Court.

LXIX. The Lords Court is either of a particular Manor, or of an whole Hundred.

LXX. The Hundred Court is that, whereunto all

the Inhabitants within the Hundred owe ſuit.

LXXI. The County Court, which is incident to the Sheriff, and hath Juriſdiction over the whole County.

CHAP. XXIII.

Suits, Original Writs, Petitions.

I. OF an Action there be two parts, the ſuit, and the judgment.

II. Suit is the parties dealing in the Action.

III. Here for their help they are allowed Councel learned in the Law.

IV. The Suit hath two parts, the beginning and the proceeding.

V. The beginning is the proper duty of the Plaintiff.

VI. This Suit hath two parts; the firſt matter of the ſuit, and original proceſs.

VII. The firſt matter of the ſuit muſt alwayes be brought into that County where the cauſe of Suit groweth.

VIII. The firſt matter of the ſuit is, for every man, by writ out of the Chancery, or in Courts where writs lie not, by Plaint or Bill; for the King alone, by Inquiry.

IX. In all of the firſt kind the Plaintiff muſt find ſurety (by ſome that will be his pledges) to proſecute the ſuit,

X. And theſe may be either to the Officer, or to the Court where the ſuit is.

XI. A poor man inſtead of ſureties ſhall give his faith to proſecute it.

XII. Writs that begin the ſuit, are original, or commiſſional.

XIII. Original, which appoint the firſt proceſs (if the Plaintiff find pledges) returnable in the Kings Bench, or Common Place.

This

XIV. This must be true Latine, and also formal.

XV. And it must expresse the name of Baptisme, and Sir-name, or (in lieu thereof) the name of Dignity both of the Plaintiff and Defendant.

XVI. Where there be many of one name, diversity of the names must be put by addition of Elder, Younger, and the like.

XVII. The Kings servants in his Court, or others by special grace of the Chancellor, may here be admitted to find pledges in the Chancery.

XVIII. Writs Original are concerning Common pleas, or appeals that concern life.

XIX. Those that concern common pleas, lie not for or against a feme covert, without her husband.

XX. Many having or giving joyntly cause of Action, may sue or be sued together in one.

XXI. Several Actions of one nature may be joyned in one Original, with several *Præcipes*, or commandments to be executed.

XII. *Here in place of Action against the* King, *Petition must be made unto him in the Chancery.*

XXIII. *And that (in case of hereditaments) though the King have granted the same away.*

XXIV. *Whereupon process shall go out against the Grantee to maintain his title.*

XXV. But whilest personal things, seised for the King, remain in the Officers hands, the party that hath right may sue the Officer, or disturb him to take the profits.

XXVI. Petition is a supplication declaring the parties right, where mention must be made of all the Kings title.

XXVII. The Writs which concern Common pleas are Real or Personal, and they both are again *Præcipes* or *Si fecerit te securum.*

XXVIII. A *Præcipe* is that which willeth the Sheriff

to command the Defendant to do ſomewhat in certain that the Plaintiff ſueth for; which if he do not, then to ſerve the firſt Proceſs.

XXIX. The form whereof is, *Præcipe* A, *quod reddat* B, *&c. Et niſi fecerit, &c. tunc ſummon, &c.*

XXX. A *Præcip* is a *Præcipe quod reddat*, or a *Præcipe quod faciat.*

XXXI. A *Præcipe quod reddat*, which lieth for things in render.

XXXII. A *Præcipe quod faciat*, which lieth for things not in render, *viz.* in Feſance, as a Writ *de conſuetudinibus & ſervitiis, ſecta ad molendinam, &c.* or ſufferance, as a *Quod permittat, &c.*

XXXIII. A *Si fecerit te ſecurum*, is that which willeth the firſt Proceſs to be ſerved without more ado.

XXXIV. The form hereof is, *Si fecerit te ſecurum de clamore ſuo proſequendo, tunc ſummon, &c.*

CHAP. XXIV.

Actions real.

I. REal Actions, where a Free hold ſhall be recovered, are Poſſeſſory, or in the right.

II. Poſſeſſory, which are to recover a Poſſeſſion.

III. In the right, which are to recover a Poſſeſſion mixt with the right.

IV. And both theſe may be of a poſſeſſion or right in himſelf, or deſcended from his Anceſtor.

V. Real Actions in the right, are either founded upon the right, or for the meer right.

VI. Real Actions, where the Freehold ſhall be recovered, lie onely againſt the Tenant of the Free-hold.

VII. With the Free-holder may be joyned in Action any having Title to enter.

CHAP.

CHAP. XXV.

Ad Terminum, quem preteriit, Entry ad communem legem, Causa Matrimonii prælocuti, Dum fuit infra ætatem, Dum fuit non compos mentis.

I. A Real *Præcipe quod reddat*, is that which is for real things in render, and it is a plea of land, or other like *Præcipe*.

II. A plea of land, which is for land or other such things in demesne.

III. Where land in certain is demanded, it must always be brought in a Ville, or place known out of any Ville.

IV. A plea of land is a Writ of Entry, or a Writ shewing the demandants title.

V. A Writ of Entry is that which is to disprove the tenants possession by means of his entry.

VI. Wherein tenant in fee-simple demanding of the possession of his Ancestor, shall say in the Writ, *Quod clamat esse Jus, & hereditatem suam.*

VII. A Writ of Entry is either against the first party, or in the degrees.

VIII. Against the first party, when it is against him to whom the first alienation was, or that made the disseisin.

IX. That in the degrees, is in the *per*, or in the *per* and *cui*.

X. In the *per*, when he against whom it is brought cometh in immediately under the first party, as heir unto him, or by alienation from him.

XI. In the *per* and *cui*, when he against whom it is brought cometh in immediately under the first parties heir or alliance.

XII. Writs of Entry grow either without wrong at the first, or upon a wrong.

XIII. These without a wrong at the first, are grounded upon a determination of the first estate, or upon a disability in the person that made it.

XIV. Upon

XIV. Upon a determination of the eſtate, either by reaſon of a particular eſtate ended, or a condition broken.

XV. Of a particular eſtate ended, is an *Ad terminum qui præteriit*, or *Entry ad communem legem.*

XVI. *Ad terminum qui præteriit*, is upon a deforcement by the leſſee, or a ſtranger, after the Leaſe for years or life expired.

XVII. *Entry ad communem legem*, is when a tenant for life doth alien and die.

XVIII. Of a condition broken, as *Cauſa matrimonii prælocuti.*

XIX. *Cauſa matrimonii præ locuti*, is for a woman that gi veth land to a man to marry her, and he will not.

XX. Thoſe grounded upon the diſability of the perſon, are a *Dum fuit infra ætatem*, and a *Dum non fuit compos mentis.*

XXI. *Dum fuit infra ætatem*, is by the infant when he cometh to his full age, upon an a ienation by himſelf, or his anceſtor, being within age.

XXII. But the clauſe that he is of full age, (*viz. qui plena eſt ætatis*) ſhall not be inſerted in the Writ, if either it be brought in the degrees, *per*, *cui*, or *poſt*, or upon the anceſtors alienation.

XXIII. *Dum non fuit compos mentis*, is upon the alienation of himſelf, or his anceſtor, or being of *non ſanæ memoriæ.*

CHAP. XXVI.

Cui in vita ſua, Cui in vita, ſine aſſenſu Capituli, A writ of Intruſion, a writ of Entry in the quibus.

I. THoſe upon a wrong at the firſt, are upon a diſcontinuance, or an Ouſter.

II. Upon a diſcontinuance, as a *Cui in vita*, or a *ſine aſſenſu Capituli.*

III. A *Cui in vita*, for the wife after the husbands death, upon his alienation of her fee-ſimple, fee-tail, or

fee-

free-hold, or of ſuch Joynt eſtate in them.

IV. And in this writ, claiming a fee-ſimple, ſhe ſhall ſay, *Quod clamat eſſe jus & hereditatem ſuam.*

V. If it be an eſtate of fee-ſimple, and ſhe bring not (in her life time) a *cui in vita*, the heir ſhall have a *ſur cui in vita.*

VI. And of this nature is a *Cui ante divortium*, when it is brought by the wife after divorcement, upon ſuch an alienation, as before.

VII. A *ſine aſſenſu Capituli*, is for the ſucceſſor of a Biſhop, Abbot, Prior, Dean, Prebendary, Maſter of an Hoſpital, &c. after the diſcontinuance of the Predeceſſor.

VIII. Upon an Ouſter, is either an Intruſion, or a diſſeiſin.

IX. That upon an Intruſion is called a writ of Intruſion, and is for him in the reverſion or remainder in fee-ſimple or for life, after the death of tenant for life, in Dower, or by the courteſie.

X. Upon a diſſeiſin, is when the diſſeiſin is done to him or his anceſtor, as a Writ of Entry in the *Quibus*, or (which is all one) in the nature of an Aſſize.

CHAP. XXVII.

A Writ of Ayel, Beſayel, Coſinage, Formedon, Eſcheat, Dower, a Precipe in Capite.

I. WRits that ſhew the demandants title, are meer poſſeſſory, or in the right.

II. Meer poſſeſſory are thoſe which are brought by the next heir upon an abatement after the death of any Anceſtor, other than his Father, Mother, Brother, Siſter, Uncle, Aunt, Nephew, Neece, ſeized in demeſne, as of the fee-ſimple, the day of his death: Of this ſort are,

III. A writ of *Ayel*, after the death of his Grandfather or Grandmother.

IV. A writ of *Beſayel*, after the death of his great Grandfather or great Grandmother.

V. A

V. A Writ of Coſinage, after the death of his great great Grandfather, or Grandmother, or any other Collateral Couſin, ſave thoſe above-mentioned in the ſecond *Rule* of this *Chapter*.

VI. In the right, is that which is to diſprove the right of the Tenant, and is a Writ of right in his nature, or a *præcipe in Capite*.

VII. A Writ of right in his nature, which ſheweth how the demandants right is grown, and is a *Formedon*, or a Writ of Eſcheat, and Dower *unde nihil habet*.

VIII. A *Formedon* is a *præcipe quod reddat*, entitling the party by the form of the gift, and is a *Formedon* in remainder, or a *Formedon* in reverter.

IX. A *Formedon* in remaindet, is for him in the remainder for life, or in fee, upon a leaſe for life expired.

X. A *Formedon* in reverter, is for the Donor after the eſtate tail determined.

XI. A writ of Eſcheat, is for the Lord upon an Eſcheat.

XII. Dower *unde nihil habet*, is a writ for ones Dower, who hath received no part at all thereof.

XIII. A writ of Dower lieth againſt Gardein by Knights ſervice.

XIV. A *præcipe in capite* is a *præcipe quod reddat* for the meer right of lands holden in chief.

CHAP. XXVIII.

A writ of right of ward, and ſur diſclaimer.

I. OTher real *præcipe quod reddats*, are thoſe which are in reſpect of a Seigniory, as a writ of right of ward, and a writ of right *ſur-diſclaimer*.

II. A writ of right of ward is to recover the wardſhip.

III. If it be for the recovery of the wardſhip of the body, it lieth as well for Gardein in Soccage, as for Gardein by Knight-ſervice.

IV. But if it be for the recovery of the wardſhip of the land, it lieth onely for Gardein by Knight-ſervice.

V. A

V. A writ of right *sur-disclaimer*, is for the Lord to prove the lands to be holden of him, when in Action, where the services should be recovered, the tenant in Court of Record disclaimeth to hold of him.

VI. If in this writ the Lord can prove the Land to be holden of him, he shall recover the Land it self.

CHAP. XXIX.

A writ de consuetudinibus & serviciis, secta ad molendinum, Quare impedit, Quid permittat, Curia Claudenda, Mesne, and *Warrantia cartæ.*

I. A Real *Præcipe quod faciat* is either to recover hereditaments, or some real things that concern them.

II. Those that are to recover some hereditament, demanding of ones own seisin are in the *debet* and *solet*.

III. But demanding of the ancestors seisin, they are in the *debet* onely, and then are in all respects as writs for the meer right.

IV. These are either in respect of a Seigniory, or to recover some other hereditament.

V. In respect of a Seigniory, as a writ *de consuetudinibus & servitiis*, and a *secta ad molendinum*.

VI. A writ *De consuetudinibus & servitiis* lieth for the Lord that hath an estate for life, or a greater estate in the Seigniority, and is deforced of his services.

VII. *Secta ad molendinum* lieth for the Lord, when the tenants that hold of him by grinding their corn at his Mill, withdraw their suit, and grind elsewhere.

VIII. Those that are to recover some other hereditament are a *Quare impedit*, and a *Quod permittat*.

IX. A *Quare impedit* lieth upon a disturbance, where he or his ancestors, or those from whom he claimeth, having at any time before presented to a Church, himself is now disturbed.

X. A *Quod permittat* lieth for one that hath common of pasture for his beasts, being disturbed by a stranger,

ſtranger, ſo as he cannot uſe his Common.

XI. Thoſe that are to recover ſome real thing concerning hereditaments, are a *Curia claudenda*, or a Covenant real, and other Writs ſounding in that nature.

XII. *Curia claudenda* lieth for a free-holder, when one that hath a Cloſe next adjoyning to him, which he ſhould keep incloſed, will not do it.

XIII. A Writ of Covenant real lieth upon a Covenant to do a thing real, as to levie a fine of Lands, *&c.*

XIV. Writs in the nature of a Covenant real, are a Writ of *Meſne*, and a *Warrantia cartæ*.

XV. A Writ of *Meſne* lieth for the tenant againſt the *Meſne*, when the Lord *Paramount* doth diſtrain the tenant whom the *Meſne* ought to acquit.

XVI. A *Warrantia cartæ* lieth for him that hath lands or tenants warranted unto him.

XVII. Here the warrantors hereditaments are liable to the warranty from the time of the action brought.

XVIII. Upon theſe Writs a fine may be levied.

XIX. A fine is the acknowledging of an hereditament in the Kings Court, accord ng to the Covenant, to be his right that doth complain.

XX. Here one of them muſt needs have ſuch an eſtate at the time of the fine levied.

XXI. That whereof the fine is levied, or any thing contained in it, may be granted back again to the Coniſor by the ſame fine.

XXII. Fines executed bind all perſons, if claim be not made within a year.

XXIII. A Feme covert joyning with her husband in a fine, it bindeth her for ever.

XXIV. Therefore the Juſtices muſt examine her, to ſee that ſhe do it willingly.

XXV. A grant by fine of a Seigniory, rent charge, rent ſeck, remainder, or reverſion, is preſently good, ſaving for bringing actions that run in privity between the tenant and him.

CHAP.

CHAP. XXX.

An Assize of Novel Disseisin, Nusance, Darrein Presentment, Juris utrum, Partitione faciendа, Nuper obiit, Quo Jure.

I. THus much of real *Præcipes*. Real *Si fecerit te securum* are an Assize, and a *Juris utrum*, or other.

II. An Assize is such a real plea meerly in possession.

III. And this is either an Assize of ones own possession, and an Assize of Mordanceſter, or an Assize of Darrein Presentment.

IV. An Assize of ones own possession, is an Assize of Novel Disseisin, or an Assize of Nusance.

V. An Assize of Novel Disseisin, is for a Free holder against his disseisor, (whether it be of land or rent) or the Bailiff of the disseisor, if himself cannot be found.

VI. This disseisin being of a rent charge or rent seck, all the tenants of the land must be named, though he were disseised by one tenant onely.

VII. If the Lord distrain the tenant too often for the rent or services, the tenant may have an Assize.

VIII. An Assize of Nusance is for him whose freehold is spoiled by any nusance.

IX. An Assize of his ancestors possession onely, called an Assize of Mordanceſter, is for the next heir upon an abatement after the death of his Father, Mother, Brother, Sister, Uncle, Aunt, Nephew, or Neece, who was seized in demesne as of fee simple the day of his death.

X. An Assize, which may be either of his own or his ancestors possession, called an Assize of Darrein Presentment, is upon a disturbance, when himself or his ancestor did last present.

XI. A *Juris utrum* is such a real plea, found upon the right of a Parson or Vicar upon his predecessors alienation.

XII. This is the nature of an Assize, and *Juris utrum*:

trum: These that follow are a *Partitione facienda*, and *Nuper obiit*, (both which lie between privies in blood) or a *Quo jure.*

XIII. A *Partitione facienda* lyeth between Coperceners, to compel partition to be made.

XIV. Therefore here, for equality of partition, things that otherwise cannot, may be granted without deed.

XV. A *Nuper obiit* lyeth against one privy in blood, that entreth after the death of the ancestor that died seised in demesne.

XVI. A *Quo jure* lyeth for the Tenant of the land, when one challengeth Common, there to try whether in right he ought to have any, or no.

CHAP. XXXI.

Debt, Detinue, Account, Covenant.

I. THus far of real Actions: A personal Action is that wherein damages shall be recovered.

II. This Action being once suspended, is gone for ever.

III. Executors bringing such an Action, must do it in all their names, as well of those that refuse administration, as of the rest; but an Action may be brought onely against those that do administer.

IV. In personal Actions growing in respect of a possession in Common, Tenants in Common are in all respects as Joynt-tenants.

V. In personal *Præcipes*, damages onely shall be recovered, where the thing it self cannot be had.

VI. Personal *Præcipes quod reddat's* are Debt and Detinue.

VII. Debt, when any thing is due upon a contract.

VIII. If the debt be money due one from another in their own right, it is in the *debet* and *detinet*, otherwise in the *detinet* onely.

IX. *When any of the Kings Goods come into a Subjects hands,*

hands, his land at all times after is chargeable for the same, into whose hands soever afterwards it comes.

X. Of this nature is a Writ of Annuity, which lieth for him that hath an Annuity, be it money or other things, as cloaths, bread, *&c.*

XI. This Writ is in the *Debet* for any other thing as well as for money, and not in the *Detinet*, therein differing from an action of Debt.

XII. Detinue is, when any thing is with-holden.

XIII. Personal *Præcipe quod faciats*, are an action of Accompt, and an action of Covenant.

XIV. An action of Accompt, which is for an accompt to be made.

XV. *The King may have it against Executors, and so can no other.*

XVI. An action of Covenant, which is for a Covenant to be holden.

CHAP. XXXII.

Personal Si fecerit Securum's.

I. PErsonal *Si te fecerit Securum's* are of things done without force, or where force is coupled with it.

II. Of those without force, some go not so far as breach of the peace, others do break it.

III. Those that break not the peace, are these that follow.

IV. *Rationabili parte bonorum*, for the Wife and Children of one deceased, to have their part of the goods.

V. *Valore maritagii*, for Guardian in Knight-service, when the heir at full age refuseth to satisfie him for his marriage.

VI. A Writ of forfeiture of marriage, which is to recover the double value against such an heir, marrying himself within age, without the Lords assent,

and at full age putting out the Lord.

VII. Intrusion of Ward, when the Heir by Knight-service entreth, and putteth out the Lord.

VIII. *Ejectione custodiæ*, for any Guardian by Knight-service or Soccage, against a stranger ejecting him of the land or body of the heir, or both.

IX. *Quare ejecit infra terminum* for lessee for years, against the feoffee in fee, or for life of his lessor.

X. Here the term it self shall be recovered, if it be not past.

XI. Trespass upon the case of things not against the peace, as *Assumpsits*, for an assumption or promise to be performed, and the like.

XII. This lieth not against Executors.

XIII. Here, and in all other actions of trespass upon the case, the Writ must comprehend all the matter of substance.

XIV. The other that break the peace, but not *vi* are called trespasses against the peace.

XV. And of this kind are especially (of the nature of such a trespass) an action of deceit, and an action of conspiracy.

XVI. An action of deceit, is upon any deceit committed.

XVII. Here, if it be upon a non-summons in a plea of land, whereby he loseth the land by default, or such like, it must be brought during the life of the Summoners.

XVIII. In a Writ of deceit the Plaintiff shall recover all that he hath lost.

XIX. Conspiracy (in the nature of a trespass) is upon conspiring by many to prejudice a man wrongfully.

XX. Such are trespasses without force: An Action of trespass coupled with force, is an action of trespass for trespass done.

XXI. A

XXI. An Action of treſpaſs brought in a Court Baron, muſt not ſuppoſe it to be done by force and armes.

XXII. And therefore no *Capias* lieth there in ſuch caſe.

XXIII. Special actions of treſpaſs are theſe that follow.

XXIV. *De Parco fracto*, for taking diſtreſs out of the Pound.

XXV. Reſcouſe, for taking a diſtreſs away before it be impounded.

XXVI. *Ejectione firmæ*, when leſſee for years of land is ouſted, where the term it ſelf ſhall be recovered if it be not paſt.

CHAP. XXXIII.

Appeal.

I. THeſe are Common Pleas: an Appeal that concerneth life, is the parties private action, proſecuing alſo for the Crown, in reſpect of a felony.

II. Appeals of the death of a man are given to the heir of the party ſlain.

CHAP. XXXIV.

A Writ of right Patent, and juſticies.

I. THus far of Original Writs: Commiſſional are theſe, which are not returnable, but determinable before the parties to whom they are directed.

II. Theſe are Commiſſionary, or meer Commiſſions.

III. Of the firſt ſort are thoſe that give authority to Court Baron to hold plea.

IV. Here the ſuitors are the Judges, not the Sheriff or Steward.

V. Theſe are a writ of right Patent, or a *Juſticies*.

VI. In both these the same course is holden, as in those that went before.

VII. A writ of right patent, is a writ for the meer right of Tenements holden of a common person, to be brought in the Lords Court of that Mannor.

VIII. If he hold no Court, or otherwise yield his Court to the King for that time, that it may be in the Kings Court with this clause, *Quia B. capitalis Dominus nobis inde remisit curiam.*

IX. This writ must shew by what service the land is holden.

X. The writ remaineth alwayes with the party himself.

IX. If one privy in blood, not past the third degree, enter after the death of the ancestor, that died not seized, in such case, a writ of right patent is called a writ of right *de rationabili parte terræ.*

XII. A woman that hath received part of her Dower, shall have a writ of right of Dower patent for the remnant, whereof she is to be endowed.

XIII. A *Justicies* is a writ that giveth the County Court power to hold plea.

XIV. And therefore it is called a Viconte writ; of this sort are

XV. An Assize of petty nusance, where a mill, or such like is levied to ones nusance.

XVI. All of them are comprehended in these Verse

rica ca gultum ges lendinum
Fab, fur, porta, domus, vir, gur, mo, murus ovil
Et pons: traduntur hæc vicecomitibus.

XVII. Admeasurement of Dower by the heir, when his Guardian, or himself endowed the wife in his nonage of more then she ought to have.

XVIII. Admeasurement of pasture by a Commoner whom an other Commoner wrongeth, by putting more beasts into the Common then he should.

XIX. H

XIX. Here all the Commoners ſhall be admeaſured.

XX. A *Nativo habendo*, for the Lord that hath an Inheritance in any Villein, when his Villein departeth away from him.

XXI. Here, if the Villein plead that he is frank, the Sheriff cannot proceed.

XXII. *Rationalibus diviſis*, for that Lord whoſe land or waſte hath by little and little been incroached upon, within time of memory until now, by a Lord whoſe Seigniory adjoyneth in another Ville, againſt the Lord ſo incroaching.

XXIII. A *Homine replegiando*; for one impriſoned, or in priſon detained, where he ſhould not.

XXIV. A *Replevin* for goods or chattels diſtrained.

XXV. This may be both by Writ and Plaint in any Court Baron, as well as in the County Court.

XXVI. This being by Plaint, it ſhall not proceed, if any thing touching the free-hold come in queſtion.

XXVII. Upon the *Pluris* not ſerved by the Sheriff, his power is determined, and the parties ſhall plead in Bank.

XXVIII. Many of the actions that went before, both for real things to be done, as *Conſuetudinibus & ſervitiis*, *Secta ad molendinum*, *Quod permittat*, Meſne Dower, *Unde nihil habet*; and alſo perſonal actions, as annuity, debt, detinue, accompt, covenant, treſpaſs, to what ſum ſoever; may as well be brought in the County by *Juſticies*, as to be returnable in the Common Place.

XXIX. Meer Commiſſions are theſe that follow, being all of them to be directed to choice perſons, ſuch as it ſhall pleaſe the King.

XXX. *Oyer* and *Terminer*, to hear and determine upon ſome heinous offence committed.

XXXI. In theſe and ſuch like Commiſſions lie properly, a Writ of Aſſociation, and *Si non omnes*.

XXXII. Association is a Writ for other to be associate into their company.

XXXIII. *Si non omnes*, is a Writ for the rest to proceed, although the other come not.

XXXIV. *Ad quod damnum*, to inquire what hurt it may be to the King, Countrey, or any other, for the King to grant such or such a thing.

XXXV. *Perambulatione facienda*, to enquire of the bounds of two Seigniories or Towns, where an incroachment by little and little is supposed to have been made.

XXXVI. This must be by the mutual assent of both Lords.

CHAP. XXXV.

Plaints, and Bills.

I. SO far of Writs: It followeth to speak of Plaints and Bills, both being in such Courts as hold plea without Original Writ.

II. A Plaint is in matters that concern Common pleas.

III. A Plaint of Trespass in a Court Baron shall not proceed, if the free-hold come in question.

IV. A Bill is in pleas of the Crown, as an appeal of Felony, Mayhem, Rape, *&c.* may be by Bill before one Coroner of the County, finding first sureties to the Sheriff.

V. One whose attendance is necessary in any Court, shall sue and be sued there in form of Plaint, which is called a Bill of *Priviledge*.

CHAP. XXXVI.

A Quo Warranto, *Office, Indictment.*

I. *THe King hath a special means of suit for trying of the right of Franchises, usurped upon him, called a* Quo Warranto, *and is to be brought before the Justices in Eyre.*

II. An Enquiry for the King is, when matter for the King is found by a Jury, called an *Enquest of Office.*

III. Thus

III. This may be before the Officers, as Sheriffs, Eſcheators, Coroners, &c. *Virtute Officii, Brevis*, or *Commiſſionis*, to them directed.

IV. Here the number of twelve is not of neceſſity requiſite.

V. An Enquiry is an Office, or Preſentment.

VI. An Office, which findeth matter to entitle the King to ſome poſſeſſion.

VII. Upon as high a matter of Record to avoid the Office, as the Office it ſelf, a man may traverſe it.

VIII. If the Office be for perſonal goods, the party may always have a traverſe, or plead any matter unto it, unleſs the Eſcheator have accounted for them; and that although the Office find the Kings title to be by matter of Record.

IX. *The King upon Office finding for him, if his entry be lawfull, and the poſſeſſions to be had at the time, is preſently in poſſeſſion.*

X. *Alſo he ſhall be anſwered all the mean profits from the time of his title.*

XI. Upon an Office found *Virtute Officii*, whereby the King is intitled to ones Wardſhip, the heir ſhall never have *livery, viz.* the land delivered out of the Kings hands.

XII. But upon a perfect Office, *Virtute Brevis*, or *Commiſſionis* (if it be a ſpecial Writ or Commiſſion, not a general one to inquire of all Wards) he may.

XIII. Therefore here the heir is allowed theſe Commiſſions following, or Writs in the nature of ſuch Commiſſions, *viz.* 1. For finding of an Office for the King. 2. For the having of the land out of the Kings hand.

XIV. Thoſe for the finding of an Office are *Diem clauſit extremum*, *Mandamus*, and *Devenerunt*, to inquire what lands holden of the King, and what of others, the anceſtor was ſeized of, the day of his death, who is his next heir, and of what age.

XV. The *Diem clauſit extremum* is to be ſued within the year after his death.

XVI. The *Mandamus* is after the year; and here it muſt further be inquired, who took the profits.

XVII. The *Devenerunt* is, when the anceſtor dieth in Ward to the King.

XVIII. Upon defect in Offices found by vertue of ſuch Writs or Commiſſions, theſe Writs following ſhall iſſue out to make them perfect, *viz.*

XIX. A *Quæ plura*, upon leaving of any land out of theſe Offices.

XX. A *Melius inquirendum*, upon any other defect in the Office.

XXI. A *Datum eſt nobis intelligi*, upon an Office finding lands to be holden of any other perſon, when there is a Record to prove that they are holden of the King.

XXII. The Writs for having the lands out of the Kings hands, are an *Ætate probanda*, and a Writ of *Livery*.

XXIII. An *Ætate probanda*, is to inquire whether he be of full age, or not.

XXIV. A Writ of *Livery* is after a perfect Office, finding a tenure in chief, to have all the lands delivered to him at once by the King.

XXV. Two being found heirs by one and the ſame title, the King ſhall not make Livery, until by enter-pleader the truth be diſcuſſed at his full age that was found heir firſt.

XXVI. Amongſt Coperceners the King upon Livery ſhall make partition.

XXVII. He that holdeth of the King by Knight ſervice, but not in chief, ſhall not ſue Livery: but when he cometh to his full age, ſhall have an *Ouſter le main*.

XXVIII. A Preſentment is an enquiry finding ſome offence againſt the King, which is alſo called an Indictment.

XXIX. Every

XXIX. Every ſtrong ſuſpicion of ſuch offence appearing of Record, hath the force of an Indictment.

XXX. Without an Indictment the King can have no ſuit, upon a wrong done principally to another; but done to himſelf, he may.

XXXI. For the preventing of divers offences, *viz.* treſpaſſes to the body, and felonies, and committing them that offend to priſon, until they may be indicted, and ſo duely puniſhed, every Hundred hath his High Conſtable, and every ſeveral Tithing within the Hundred hath his petty Conſtables, or Headboroughs.

XXXII. Any man, ſuſpecting another of a felony committed, or but intended, may arreſt him.

XXXIII. With Indictments of treſpaſs, informations upon penal Statutes (ſuch as inflict a pecuniary mulct, or other penalty upon offenders) have a near affinity.

XXXIV. Indictments of the death of a man are to taken before the Coroners.

CHAP. XXXVII.

Proper Original Proceſs.

I. HItherto of the firſt matter of the ſuit: It followeth to ſpeak of Original Proceſs.

II. Original Proceſs is that Proceſs which is until the Defendant do appear.

III. Original Proceſs is proper or improper.

IV. Proper, which is to bring ſome matter into Plea or ſolemn action; and it is ſingle, or mixt.

V. Single, which is by the poſſeſſions onely, (lands or goods,) or onely by the perſon.

VI. That by the land is of two ſorts, firſt, ſummons, and Grand *Cape* in a *Præcipe quod reddat*.

VII. The ſummons is the warning of the tenant in his land by certain ſummoners.

VIII. The

VIII. The ſummons upon an action brought againſt one as heir, muſt be in the land that did deſcend.

IX. If it be to recover the freehold of land it ſelf, it muſt be in the ſame land.

X. A Grand *Cape*, is to take the land into the Kings hands by the view of lawfull men, with a ſummons of the tenant to anſwer, as well to his default, as to the demandants action.

XI. If the tenant be returned, ſummoned, where indeed he was not, the Writ ſhall abate.

XII. Secondly, it is ſummons and re-ſummons, in a Mordanceſter, *Juris utrum*, and an Aſſize of *Darrein* preſentment, and upon default the enqueſt awarded.

XIII. Original proceſs by the goods, as in Aſſizes of *Novel diſſeiſin*, and Nuſance, where the Original proceſs is *Pone per vadios & ſalvos plegios*.

XIV. A *Pone per vadios & ſalvos plegios*, is a proceſs to attach the defendant by certain of his proper goods, being meer perſonal chattels, which he ſhall forfeit, if he appear not; and upon ſuch default, the Inqueſt (ſummoned by the Writ) is preſently to be awarded to recognize the Aſſize.

XV. The Original proceſs by the perſon, is a *Capias*, (which is a proceſs to impriſon him,) then an *Exigent* or ſolemn demand at five ſeveral County Courts immediately following one another, and for not appearing, *Outlawry*.

XVI. This Judgment of Outlawry is given by the Coroner in the fifth County, and is onely in mayhem, felony, and treaſon.

XVII. If the *Exigent* be returned not fully ſerved without any folly in the Plaintiff, he bringing an *Exigent de novo*, before any other County holden, ſhall have the benefit of the former Counties.

XVIII. Outlawry diſableth him from ſuing any action.

XIX. *By*

XIX. *By Outlawry all his chattels are forfeit to the King, even such as he hath but a right unto.*

XX. In Mayhem there must be three *Capias*, *viz.* *Capias*, *alias*, & *pluries*; two in Felony, *viz.* Stealth, Robbery and Burglary; and onely one in the death of a man, and High Treason.

XXI. In Felony and Treason, they that tarry the Exigent forfeit their chattels.

XXII. A mixt original process is that which is so by his goods, or for want of goods, resort may be made sometimes to his land, and sometimes to his person, and sometimes to both.

XXIII. Those of the first sort are in all other real actions, and in all personal actions (except trespass and offences against the Publick) and in all *Justicies Summons* by the goods, *Attachment*, (or a *Pone per vadios*, &c.) and a *distress* infinite.

XXIV. Distress infinite is a process to distrein him continually after, till he do appear, by certain of his goods and profit (or issues) of his lands, which he loseth if he appear not.

XXV. Upon his distress, must be returned in issues the value of all his lands, from the *Teste* of the writ, until the day of the return.

XXVI. With these issues the land is chargeable.

XXVII. In such process as these, if the defendant be a beneficed Clerk, he must be warned by his person, or land, if he have any Lay fee; otherwise, process shall go out to the Ordinary to make him appear by the issues of his benefice.

XXVIII. Here also if upon the summons a *nihil* be returned, *viz.* that the party hath nothing whereby to be summoned, in such case there shall issue forth a continual *Capias*.

XXIX. But a *Capias* lieth not here against a Peer of the Realm, because by common intendment he must have free-hold.

XXX. In

XXX. In a Replevin in the County Court, if the goods be conveyed away, ſo as at the tenants ſuit they cannot be reſtored, proceſs of *witherman* lieth, which is for the Plaintiff to have of the others goods, until reſtitution of his own.

XXXI. Thoſe of the ſecond ſort are, in all treſpaſſes upon the caſe, and in all offences in the nature of treſpaſſes upon the caſe, an *Attachment*, *diſtreſs* infinite, and upon *nihil* returned, a continual *Capias*, as before.

XXXII. Here for contempts a *Capias* lieth againſt Peers of the Realm.

XXXIII. Thoſe of a third ſort are, in treſpaſs *vi*, and offences againſt the publick; *Attachment*, *diſtreſs* infinite, and upon *nihil* returned, three *Capias*, *Exigent*, and *Outlawry*.

CHAP. XXXVIII.

Improper Original proceſs Commandatory.

I. THus far of proper original writs, which begin an Action, beſides which, there are certain other originals out of the Chancery, which are not deductory to bring any matter into plea or ſolemn action, but onely commandatory or prohibitory to do, or to leave ſomething undone.

II. Upon theſe writs no proceſs lieth, and therefore they may be termed *Improper* Originals.

III. The Commandatory writs of this nature are theſe that follow.

IV. *De Dote aſſignanda*, which is for the wife of the Kings tenant, when the King is intitled by office to land, where ſhe is dowable.

V. This writ is always directed to the Eſcheator, and may be either to deliver her ſuch part of her land, as is already aſſigned to her in the Chancery for her dower, or for the Eſcheator himſelf to aſſign her part unto her.

VI. If

VI. If her husband held in chief, then she must take an oath in the Chancery, not to marry without the Kings licence.

VII. *De Homagio capiendo*, which is for the tenant by Homage Anceſtrel, to compel the Lord to receive his homage.

VIII. *De ſcutagio habendo*, for the Lord to have Eſcuage of his tenants by Knights-ſervice, when the ſame is due upon a Voyage Royal, &c.

IX. *De auxilio ad filium ſuum militem faciendum & filiam maritandam*, for the Lord to have ſuch aid of his tenants where it is due.

X. *De Corodio habendo*, to have a Corody for his ſervant.

XI. *De annua penſione habenda*, to have a penſion granted to his Chaplain, until he be promoted to a benefice.

XII. *De libertatibus allocandis*, for one ſingle perſon, or body corporate impleaded before the Kings Juſtices, to have the liberties formerly granted unto them, to be allowed:

XIII. *De executione judicii*, to have a judgment executed: and this is a *Juſticies*.

XIV. *De reſtitutione temporalium*, where the temporalties before ſeized into the Kings hands are to be reſtored to the Prior, or Biſhop elect and conſecrate.

XV. *De ſecuritate pacis*, for him that is in fear of corporal hurt, or of the burning of houſes, to be ſecured of peace in that behalf againſt the party whom he feareth, where a corporal oath muſt be taken by him, that ſtandeth ſo in fear.

XVI. *De vi laica removenda*, to remove all Layforce in any Church.

XVII. Of cleanſing ſtreets, to have the wayes, ſtreets, and lanes of a Town corporate to be made clean, when they be apt to cauſe infection by their naſtineſs and ſtench.

XVIII. *De*

XVIII. *De leproſo amovendo*, to remove a Leper or Lazer (that will come abroad) from the company of men, to ſome ſolitary place of abode.

XIX. *De excommunicato capiendo* upon a *ſignificavit*, *viz.* the Ordinaries certificate into the Chancery, that one excommunicate ſtandeth out 40. dayes, to impriſon him, until he ſatisfie holy Church: And this writ alſo is a *Juſticies*.

XX. *De excommunicato deliberando*, to deliver him out of priſon, when the Church is ſatisfied.

XXI. *De cauſione admittenda*, when one taken by an *excommunicato capiendo* offereth ſufficient pledg or caution to obey holy Church, which is refuſed, to have that caution admitted, and to be delivered.

XXII. *De heretico comburendo*, to cauſe one convicted for an heretick to be burnt.

XXIII. *De coronatore eligendo*, to chooſe a Coroner in full County by the free holders of the County.

XXIV. *De coronatore exonerando*, to diſcharge a Coroner of his Office upon juſt cauſe.

XXV. This writ is directed to the Coroner himſelf.

XXVI. *De electione viridariorum Foreſtæ*, to chooſe a Verdor of the Forreſt.

XXVII. *De exonerando viridario Foreſta*, to diſcharge a Verdor of the Foreſt.

XXVIII. *Congé d'eſtire*, to Dean and Chapter (or ſuch like) to chooſe their Biſhop.

XXIX. A writ for the Royal aſſent, to ſignifie to the Ordinary his aſſent to the election of an Abbot, &c. and to will him to execute that which belongeth unto him.

XXX. This is alwayes directed to the Ordinary himſelf.

XXXI. *De ſecuritate invenienda, quod non ſe divertat in partes exteras ſine licentia Regis*, to compel one to find ſufficient mainpernors in a reaſonable ſum of money

money, not to go in forreign parts without the Kings licenſe, nor any thing there to attempt in contempt or prejudice of the King, or hurt of the people; nor to ſend any thither for any ſuch cauſe.

XXXII. All *Dedimus poteſtatems*, the principal of which are theſe that follow.

XXXIII. *Dedimus poteſtatem*, to give the Kings Royal aſſent to the election of an Abbot, or the like, made, or to be made; and to ſignifie ſo much by his Letters to the Ordinary, that he may do that which belongeth to him, and to receive fealty, *&c.* Commanding the party to do the premiſes.

XXXIV. *Dedimus poteſtatem de fine levando*, to certain perſons to take the acknowledgment of a fine out of Court, when one that hath agreed in the Kings Court to levie a fine, is ſo feeble that he cannot travel.

XXXV. The Chief Juſtice of the Common Place may take the acknowledgment of a fine without any *Dedimus poteſtatem.*

XXXVI. *Dedimus poteſtatem de Atturnato faciendo*, for the Judges to admit an Atturney for one in a ſuit.

CHAP. XXXIX.

Improper Original Proceß Prohibitory.

I. PRohibitory improper Original Writs are theſe that follow.

II. A Protection *cum clauſula nolumus*, to free ones poſſeſſions, that nothing be taken againſt his will for the Kings buſineſs.

III. Parſons, or other ſpiritual perſons, not to be charged to the payment of fifteens for goods in their poſſeſſions annexed to their Churches.

IV. *Quod Clerici non elegantur in Officium Balivi*, for a Clerk not to be choſen an Officer for his lands.

V. A prohibition to forbid tenant in Dower, or by courteſie

courteſie of *England*, or Guardian by Knight-ſervice, or in Soccage, to commit waſte to the deſtruction of the Inheritance.

VI. A *Quo minus*, for grantee of Eſtovers, to reſtrain the grantor from committing waſte, ſo as he cannot have Eſtovers.

VII. *De exoneratione ſectæ*, for tenants by ſuit of Court, or other ſervices, that they be not diſtrained to do the ſame for ſuch time as they ought to hold the land diſcharged.

VIII. *De exonerando pro rata*, to diſcharge the tenant of parcel of the Land. according to the rate of his land, when he is lawfully diſtreined for all the rent & ſervices.

IX. *De eſſendo quieto de Tholonio*, to Officers not to grieve ſpiritual perſons, and others, that ought to be quit of paying of Toll, Murage, Pannage, Pontage, *&c*

X. *De non ponendo in Juratis*, to diſcharge Peers of the Realm, and other perſons priviledged from being of Juries, unleſs their preſence be for any ſpecial cauſe neceſſary.

XI. *Ne exeas regnum*, to the party himſelf, to inhibit him from going into foreign parts without the Kings licenſe.

CHAP. XL.

The Count, and Pleading.

I. THus far the Beginning of a ſuit: The Proceeding follows, which hath two parts, the Count, and the Pleading.

II. A condition (annexed to an eſtate of free-hold) cannot be alledged in Count or Pleading, unleſs it be by Deed.

III. The Count is a larger Declaration of the ſubſtance of the Original Writ, and therefore it is uſually termed a *Declaration*.

IV. In real actions, which are in the right, the demandant

mandant muſt alledge the taking of the profits, called *Eſplees*, in the Declaration.

V. Inſtead of the Count, a Plaint ſhall be made in Aſſizes of Novel diſſeiſin; and in Writs of Dower, a Demand.

VI. Pleading is the parties debating of the ſuit.

VII. Every Plea muſt be offered to be proved true, by ſaying in the Plea, *Et hoc paratus eſſe verificare*; and this is termed an *averment*.

VIII. An advantage of a matter which cannot be pleaded, ſhall be ſaved by proteſting, not acknowledging it to be true, although the matter pleaded paſs againſt him.

IX. Pleas are either of the Defendant when he is firſt brought in to anſwer, or the mutual Pleas of both.

X. In a joynt Action againſt two or more, one of them appearing ſhall not anſwer, till the other come in to anſwer, or the ſuit be finiſhed againſt him, as by death, outlawry *&c.*

XI. An Action by, or againſt an Infant, as heir, ſhall not proceed till his full age, unleſs it be apparent, that by proceeding he cannot be prejudiced.

XII. But in a Writ of Dower an Infant heir ſhall not have his age.

XIII. The Defendants firſt Pleas are Dilatory, or to the Action.

XIV. Dilatory, which are before any Plea in Bar.

XV. When an Action is brought againſt many, they muſt joyn in the Plea, if they intend to plead theſe Dilatories.

XVI. Dilatory Pleas are Exceptions, or Foreign advantages.

XVII. Exceptions are Dilatories grounded upon the matter it ſelf of the ſuit; and are in diſability, or abatement.

XVIII. Thoſe in diſability are to the juriſdiction or perſon, both which muſt be before the Count.

XIX. To the juriſdiction, when it is alledged, that the Court ought not to hold plea of it.

XX. To the perſon, when it is alledged, that the Plaintiff ought not to be anſwered, as if he be outlawed, excommunicated, *&c.*

XXI. But in caſe of Excommunication the ſuit ſhall be put without day, onely till he be abſolved.

XXII. Thoſe in abatement are for any fault in the firſt matter of the ſuit.

XXIII. For this cauſe the Defendant may have *Oyer* of any thing tendred by the Plaintiff, and not being parcel of the Record, as of the Writ, Conditions *&c.*

XXIV. Pleas in abatement are to the Count firſt, and then to the Writ.

XXV. Amongſt Pleas to the Writ, exceptions that ariſe upon the view of the Writ are to be pleaded before thoſe that are foreign, as non tenure, ſeveral tenancy, *&c.*

XXVI. Pleas to the Count, are for inſufficiency, variance from the Writ, *&c.*

XXVII. Pleas to the Writ, are for default of form, falſe Latine, *&c.*

XXVIII. By waging of Law, for non-ſummons in a *Præcipe quod reddat*, the Writ ſhall abate.

XXIX. In Aſſize of Novel diſſeiſin and Nuſance, and in appeals of Felony and *Juris utrum*, the Defendant may have many pleas in abatement.

XXX. The Writ abating for ſome cauſe that cannot be imputed to the Plaintiffs folly, himſelf bringing another with ſpeed in the ſame Court againſt the ſame party, ſhall have all advantages of the former; and this is called a Writ purchaſed by *Journeys accompt.*

XXXI. Foreign advantages are delays without exception to any thing; as in all Actions, *Oyer* of the Writ,

writ, &c. In real actions view, aid prayer, and voucher.

XXXII. View, is (in real actions) of the thing demanded, or by the land whence it cometh, when it is so necessary, as without view the defendant cannot well answer.

XXXIII. Aid prayer is for the tenant for life, to request him that hath the inheritance, to help him to plead: so must the Incumbent pray in aid of the Patron and Ordinary.

XXXIV. Voucher is the calling in of one that should warrant to answer the action.

XXXV. Here the voucher loosing, the tenant shall recover in value against him any hereditaments that he had at the time of voucher.

XXXVI. Therefore the voucher is in lieu of another action, where the original process is *Summons ad warrantizandum*, and then a Grand *Cape ad valentiam*.

XXXVII. If one be vouched within age, it is a *summons ad habendum visum* first, and being awarded of full age; a summons *ad warrantizandum*, and Grand *Cape*, as before.

XXXVIII. But if he be awarded within age, the *parol* shall *demurre* until his full age.

XXXIX. If the summons *ad warrantizandum*, or *habendum visum* be not served, then a *sequatur sub suo periculo* is to go forth, and if the tenant cannot get that served, he loseth his warranty; for it is *sub periculo* of the tenant.

XL. But in exchanges the hereditaments are liable from the very time of the exchange.

XLI. In partition amongst co-perceners from the death of the ancestor.

XLII. *The King shall not be vouched but prayed in aid off, which in case hath the force of a Voucher.*

XLIII. So is it also of co-perceners.

XLIV. In an Aſſize of novel diſſeiſin, and nuſance, voucher lieth not, unleſs the vouchee be preſent in Court, and will by and by enter into warranty.

XLV. He that is impleaded in any action, wherein he may vouch, and doth not, ſhall never have the benefit of a *Warrantia Cartæ*.

XLVI. Advantages in certain perſonal actions, are Garniſhment and Enterpleader.

XLVII. Garniſhment is upon a writ of detenue, when it be alledged by the defendant to have been upon a bailment by the Plaintiff, and another, or for another, upon condition that other ſhall be brought in, to ſhew whether by reaſon of that bailment himſelf or the Plaintiff ought to have the goods, chattels, &c.

XLVIII. Enterpleader is, when divers bringing ſeveral writs of detinue, ward, or *Quare impedit*, againſt the ſame perſon, in the ſame County, and for the ſame thing, the reſt ſhall anſwer him that brought the firſt writ.

XLIX. *The King may appoint any place he thinketh good to be ſafeguard for all offendors flying thither, that they ſhall not be moleſted, or compelled to anſwer, which priviledged places have in former times been called Sanctuaries.*

L. Thus far of dilatory Pleas: Pleas to the action are ſuch as go to the Body of the matter, and are Pleas in Bar, or Confeſſions.

LI. Pleas in bar, are thoſe which are to bar the Plaintiff of his action.

LII. In theſe the defendant muſt make defence, as to ſay, *Defendit vim & injuriam quando, &c.*

LIII. But no ſuch defence ſhall be made in Dower, Aſſize of novel diſſeiſin, *per quæ ſervitia*, or Attaint.

LIV. The tenant may plead a warranty in bar of him that ſhould warrant; if he bring the writ.

LV. And

LV. And though the tenant of the land be a ſtranger to the warranty, yet he may plead that he hath a third perſons eſtate, and ſo rebut by a warranty made unto that perſon.

LVI. But in writs of Dower the anceſtors warranty is no bar.

LVII. A warranty made by the diſſeiſor at the time of the diſſeiſin, barreth not the heir, and this is called a warranty that commenceth by diſſeiſin.

LVIII. In an Aſſize of novel diſſeiſin and treſpaſs, the defendant pleading a title in bar, muſt give colour of title to the Plaintiff.

LIX. In the giving of this colour, theſe three things muſt be obſerved; 1. It muſt be to the Plaintiff, not to a ſtranger, or to the defendant: 2. It muſt be of ſuch a poſſeſſion, whereby he may maintain his action: 3. The Colour muſt be a matter doubtfull in law, or otherwiſe difficult to the Lay-people.

LX. In real actions for the meer right, when it is in reſpect of a diſſeiſin done, the tenant cannot traverſe the ſeiſin, but may tender half a mark to the King to have it enquired by the Jury: and being found that the demandant was not ſeized in the time whereof he counteth, that ſhall bar him for ever.

LXI. *The tenant cannot tender half a Mark againſt the King.*

LXII. The heir or executors in an action brought againſt them (where they are chargeable) pleading a matter in their own knowledg, which goeth in perpetual bar, ſhall be charged as in their proper duty, if it paſs againſt them.

LXIII. In Aſſizes of novel diſſeiſin, nuſance, mortdanceſtor, *Juris utrum*, and in indictments and appeals of felony, the defendant may plead in abatement, and over in bar, or take the general iſſue alſo.

LXIV. In Aſſizes of novel diſſeiſin and nuſance,

he may plead a ſpecial matter, that amounteth but to a general iſſue.

LXV. Upon Indictments of Felony and Treaſon, the Defendant being put to anſwer, is not allowed Councel, if he deny the fact.

LXVI. A preſentment in the Leet or Sheriffs Turn, after the day of preſentment bindeth the party for ever, and is not traverſable, but in caſes that touch ones freehold.

LXVII. Therefore the courſe is, to remove ſuch preſentments into the Kings Bench by a *Certiorari*, where they may be traverſed.

LXVIII. Confeſſion is, when the Defendant confeſſeth the Plaintiffs action to be good.

LXIX. The Defendant confeſſing an Indictment of Felony, may accuſe others of the ſame offence.

LXX. One that flieth to a Church or Church-yard, and confeſſeth before the Coroner, when he cometh, the certainty of any bare Felony, where life and member is to be loſt, before he be thereof attainted, may abjure.

LXXI. Abjuration is his Oath before the Coroner himſelf, to depart the Realm for ever at the time and place ſet him; going the direct way thither; tarrying there but one flood and ebb, if he can have paſſage, and, till he can ſo paſs, going every day in the ſea up to the knees to aſſay if he may paſs over: and if he cannot paſs within Forty days, then to put himſelf again into the Church as a Felon, *&c.*

CHAP. XLI.

Replication, Rejoynder, Sur-rejoynder, &c. the Iſſue and Demurrer.

I. THus far the Pleas of the Defendant: The mutual Pleas of both, are the Debating before Iſſue, or the Iſſue it ſelf.

II. Debating

II. Debating before issue, is the discussing of the material things to draw it to some one issue.

III. Of the first sort, are replication, rejoynder, surrejoynder, &c.

IV. In an Assize against many, if each take the whole tenancy severally, and plead several matters in bar, or one *Nul-tort*, and the other in bar, the Plaintiff at his peril must choose his tenant. And then after issue for the whole, the Tenancy shall be first inquired of; and being found for the Plaintiff, then the other issue shall be inquired: but being found against him, and no title made against the tenant indeed, the Writ shall abate.

V. In an Action of trespass meer transitory, although the Defendant justifie by any special matter, yet the Plaintiff may take issue, that it was done *de son tort de mesne*, *viz.* wrongfully by the Defendant, without answering to that matter.

VI. If it be a trespass upon land, the Defendant justifying in some other land then the Plaintiff meaneth, the Plaintiff may make a new assignment.

VII. An Issue is, when both the parties joyn upon somewhat that they refer to tryal to make an end of the plea.

VIII. This Issue is of the Fact, or of the Law.

IX. Of the Fact, when the proper contradiction of that which one alledgeth is set down by the other.

X. After which, if any insufficient pleading appear in the Record, whether the issue be joyned thereupon (which is called a *Jeofaile*) or no, the Parties must begin a new, where the first defect was.

XI. But no re-pleader shall be in an Assize, if the Plaintiff have disclosed a sufficient title.

XII. If the tender of this issue come on the Plaintiffs part, the form is, *Et hoc petit, quod Inquiratus per recordum* or *Patriam*, &c.

XIII. If on the Defendants part, then it is, *Et de hoc*

ponit ſe ſuper recordum illud, or *ſuper Patriam.*

XIV. Iſſue in a Writ of Right cannot be joyned upon the meer right, but by the party himſelf, and this is called the joyning of the Miſe.

XV. Where the Plaintiff in his replication maketh title at large, the Tenant may joyn iſſue upon the title, by ſaying, *Veigne Aſſize ſur le title*, and this is called a *Pleading to the Action at large.*

XVI. But in a perſonal action, when the title of the Land cometh in queſtion, it lieth not till iſſue joyned; and yet in that caſe it never lieth for Tenant for life, but onely for tenant for years, Bailiff. *&c.*

XVII. *Aid in theſe actions ſhall be of the King before iſſue joyned onely.*

XVIII. This being a matter (*In fait, viz.*) done in the countrey, is triable by the oath of twelve free and lawful men of the ſame County indifferently choſen.

XIX. Four of the Jury muſt be of the ſame Hundred.

XX. If the thing in iſſue lie in the notice of two ſeveral Counties, and not of one onely, the Jury ſhall be made equal out of both.

XXI. But upon an Indictment of an offence againſt the Crown, the tryal ſhall never be by Joynder of Counties.

XXII. But if the Defendant plead in any Action, that the Plaintiff is a villein regardant to a Manor of his in another County, yet the ſame ſhall be tried in the County where the Writ is brought.

XXIII. Where a Peer of the Realm is party to the Action, a Knight muſt be returned upon the Jury.

XXIV. In a Court of Pipowders, the trial is by the Merchants.

XXV. The Jury in a Writ of Right is called the Grand Aſſize, being four Knights (or others in default of Knights) chooſing of twelve unto them.

XXVI. This Jury is called the *Grand Aſſize*, becauſe it

it always consisteth of more then 12. *viz.* of 16.

XXVII. Upon trial by Jury, challenges are allowed for the parties (if they will) both to the *Array*, and to the *Polls*, and are to be tried by some of the Jurors.

XXVIII. If it be before any Jurors sworn, the Court shall choose Triers; but when any of the Jurors are sworn, they must try it.

XXIX. Challenge to the *Array*, is when the Jury is not sufficiently impanelled.

XXX. Upon just cause of exception to the Sheriff, and afterwards to the Coroner, the Court shall choose certain persons to return the Jury, who are called *Elisors*.

XXXI. And then the parties shall never afterwards make any challenge to the *Array*.

XXXII. Challenge to the *Poll*, is when any of the Jurors are not fit to pass upon the trial.

XXXIII. This challenge must be taken before the Panel be perused, and shall be tried by two of the Jurors chosen by the Court.

XXXIV. But challenges that sound not in reproach of the Juror, shall be examined upon his Oath, which is called examination upon *Voire Dire*.

XXXV. He that challengeth the *Array*, if it pass against him, (or that he release it) shall never challenge the *Polls*, without shewing cause presently, which shall be tried out of hand.

XXXVI. After challenge to a Juror for one cause, which passeth against the Challenger, he shall not challenge him for another.

XXXVII. In Indictments and Appeals of Felony, the Defendant may challenge thirty five Jurors without shewing cause, and this is called a *peremptory* challenge.

XXXVIII. When there lacketh some to fill the Jury, others of the same sort shall be taken till it be full, and they are called *Tales*.

XXXIX. The *Tales* must be an even number, and less

leſs then the principal Pannel, as *Decem Tales*, *Octo Tales*, &c.

XL. Every *Tales* muſt be of a leſs number then the other, as after an *Octo Tales*, a *Sex Tales*, &c.

XLI. But in Indictments and appeals that touch life, a *Tales* may be of a greater number then the principal Pannel.

XLII. The Jury being charged, may neither eat nor drink (but by leave of the Juſtices) before their Verdict given.

XLIII. Doing ſo before they be agreed, it maketh their verdict void; but after they are agreed, it is onely finable.

XLIV. The Jury upon arraignment, acquitting one that was found guilty of the death of a man upon an enquiry before the Coroners *ſuper viſum corporis*, muſt find who did the fact.

XLV. The Jury in an Aſſize of Novel diſſeiſin, ſhall inquire of the plea in abatement.

XLVI. And therefore in ſuch an Aſſize, no plea in abatement is anſwerable.

XLVII. An Infant bringing an Aſſize, if a matter done in the ſame County be pleaded againſt him, the Jury ſhall inquire of all the circumſtances.

XLVIII. The like inquiry of the circumſtances ſhall be, if in an Aſſize brought againſt him, he plead to the Aſſize at large.

XLIX. If the tenant in a *mordanceſter* traverſe any point of the Writ, yet the Jury ſhall inquire of all the points, and any one found againſt the Demandant abateth the Writ.

L. For the better direction of the Jury in their verdict, greater liberty is permitted in pleading a matter doubtfull in Law.

LI. For ſometimes a traverſe may be omitted.

LII. Sometimes alſo, the ſpecial matter may be pleaded

pleaded together with the general issue.

LIII. Likewise the Court may be abridged before verdict, so as the original remain true.

LIV. After acquital upon an appeal or indictment of felony or treason, he shall never be drawn in question for the same offence again.

LV. In writs of right and in appeals that touch life, trial may be by battail at the defendants choice.

LVI. The battail in a writ of right may be by Champians, who must be freemen.

LVII. Here the demandants Champion must have seen him or his ancestors in possession, and thereof take his oath.

LVIII. The battail in an appeal must be in proper person; and therefore here the defendant is restrained from the choice of Battail (and must needs try it by Jury) if there be any notorious presumption of the fact in him, or imbecility in the Plaintiffe: Also against a Peer of the Realm bringing an appeal, the defendant shall not wage Battail.

LIX. In a writ of Dower, issue taken upon the death of her husband, shall be tried by witnesses.

LX. In some cases also the trial shall be by the defendants oath, as 1. Where the tenant in a *Præcipe quod reddat* alledgeth, that he was lawfully summoned according to the law of the land. 2. In meer personal contracts growing without deed or privity of others, the defendant may wage his law.

LXI. Therefore in such kind of actions executors are not chargeable.

LXII. *No wager of Law shall be against the King.*

LXIII. But wager of law may be upon plaints in Court Barons for personal things under 40 *Sh.*

LXIV. An issue of Law (returned a *Demurrer*) is when admitting the matters alledged, either of them resteth in the judgment of the Court.

LXV. The

LXV. The *demurrer* being joyned upon an exception to the original it ſelf, or Count, for ſome fault appearing in them, doth onely drive the defendant to make a better anſwer (which is called a *reſpondes ouſter*) if it paſs againſt him.

CHAP. XLII.

Appearance, Continuance, Meſne Proceſs.

I. THus far concerning pleading; the other mean acts are appearance and continuance, or judicial proceſs.

II. Appearance is the parties coming into the Court, where upon common day given, the fourth day after the very day is allowed.

III. When the defendant appears not as he ought, he is ſaid to make default.

IV. When the party for not appearing ſhould have ſome great loſs, or corporal pain, he may appear, though the Officers return force him not to it.

V. If the Plaintiff will not appear when he is demanded at the day, (which is termed a *Non-ſuit*,) or ſay in Court, that he will not ſue forwards, (which is a *retraxit*) this is peremptory, and loſeth him his Action.

VI. But in real Actions brought by many, if one will not proſecute, the reſt may alone; except in a writ *de nativo habendo*, and that is *in favorem libertatis*.

VII. For executors alſo, ſummons and ſeverance lieth in perſonal actions.

VIII. If the defendant will not plead (which is called a *Nihil dicit*) this in all actions is peremptory, and loſeth the action.

IX. So in perſonal Actions, if he appear, and after plea or demurrer joyned, make default; this is alſo peremptory, and imports a *Nihil dicit*.

X. How-

X. Howbeit, either of the parties may for once be excused of appearance, if they demand it the first day, or any of the four dayes, unless the other enter an exception, that no Essoyn be received.

XI. Also upon every mean appearance a new Essoin lieth.

XII. And this is called an Essoyn *de mal venir*, or the common Essoin.

XIII. Besides this Essoyn, there are divers other for special causes allowed, as being beyond Sea, of going *ad terram sanctam*, of the Kings service, and *de malo lecti*.

XIV. These last have a year and a dayes adjournment, whereupon an oath must be taken that the cause is true.

XV. But no such special Essoin lieth in an Assize of novel disseisin, Dower, Assize of *Darrein presentment*, and *Quare impedit*.

XVI. Continuance is from day to day till the end of the suit.

XVII. Here if the Plaintiff do nothing, it is called a *discontinuance*.

XVIII. And if any error be in the continuing, as by awarding a *Capias*, where a distress should be, it is called a *miscontinuance*.

XIX. The suit of an excommunicate person shall be put without day, (termed *parol sans Jour*) till he be absolved.

XX. So it is also in all other cases, which happen without the Plaintiffs folly.

XXI. After continuance taken, the defendant may for once, leave his former plea, and plead any thing, growing since this latter continuance.

XXII. Continuance is by process, or upon the *Roll*.

XXIII. That upon a Roll is the *dies datus*, or Emparlance.

XXIV. *Dies*

XXIV. *Dies datus*, when the Court giveth the parties day, and this is alwayes before the Count.

XXV. Such a continuance by assent of both the parties is called a *Prece partium*.

XXVI. But in Assizes the continuance is by a *Justiciarii nondum avisantur*, and not by a *Dies datus*.

XXVII. Emparlance is, when the defendant demandeth day, to see if he may end the matter without further suit, which he may do once, but not oftner without the Plaintiffs consent, and this is alwayes after the Count.

XXVIII. After Emparlance he cannot plead to the Jurisdiction or person, neither yet in abatement either of the Court writ, nor demand *Oyer* of an Obligation, or the like.

XXIX. But after a special Emparlance, *Salvis omnibus advantagiis*, he may plead to the Count or writ, and also have *Oyer*; but not to the Jurisdiction or person.

XXX. In an appeal that toucheth life; if the defendant plead a plea, whereby his life should come in jeopardy, the plaintiff shall not imparle unto it, but must answer *fedente curia*.

XXXI. Default after Emparlance is peremptory, and loseth the action in all actions real and personal.

XXXII. Judicial process, is a process out of that Court, where the original is returned, prosecuting the Action.

XXXIII. Judicial process are mesne process, or in nature of new originals.

XXXIV. Mesne process, which is for any necessary Act to be done, not onely for the Plaintiff against the defendant, but for either of them against any other whose presence in the Court may be necessary for them.

XXXV. Upon

XXXV. Upon a fine levied, before it be engroſſed, the Writs to compel attornment are.

XXXVI. *Per quæ ſervitia*, when the fine is levied of a Seigniory.

XXXVII. *Quem redditum reddit*, when it is of a rent charge or rent ſeck.

XXXVIII. *Quid juris clamat*, when it is of a remainder or reverſion.

XXXIX. *In Petitions, or whatſoever the King (being made party) may be at loſs, a writ of ſearch lieth; which is to ſearch in the Treaſury before the Plea proceed, if by likelihood ſome matter may be found there to maintain his title.*

XL. In real *Præcipes*, where a free-hold is to be recovered, upon default, after plea, iſſue, or *demurer*, a *Petit Cape* ſhall go forth to cauſe the tenant to anſwer to the default onely.

XLI. So upon a voucher, a *Petit cape ad valentiam.*

XLII. In ſuch as are for other hereditaments (ſave in point of Seigniory) as annuity, *Quare impedit*, *Quo jure*, *Quod permittat*, *&c.* upon defau't as before, a diſtreſs ſhall go forth in lieu of a *Petit cape.*

XLIII. The proceſs againſt Jurors is a *Venire facias* to the Sheriff to return them; at which day if they appear not, then a *Habeas corpora*, and after that a diſtreſs infinite.

XLIV. In an Action of treſpaſs (always) whatſoever the iſſue be, *releaſe*, *juſtification*, *&c.* and in debt, detinue, account, and other perſonal action, which are for things in certain, if the iſſue be taken upon matter in *fait* onely, and the Defendant make default, the Jury ſhall be taken.

XLV. But if it be upon matter in writing, the Plaintiff may there pray Judgment, if he will: howbeit,

if

if he do not pray it, the Jury ſhall be taken by default as in Action of Treſpaſs.

XLVI. But in Aſſizes of Novel diſſeiſin, Nuſance, Mordanceſtor, Darrein Preſentment, and *Juris utrum*, the Original Writ commandeth a Jury, as well as the Defendant, to be warned; which ſummons to the Jury ſerveth inſtead of a *Venire facias*, ſo that the Proceſs here againſt the Jury, is *Summons*, *Habeas corpora*, & *diſtringas*.

XLVII. And therefore here, upon default, after that Original Proceſs ended, (*viz.* the Attachment in an Aſſize of Novel diſſeiſin and Nuſance, and the Summons and re-ſummons in a Mordanceſtor, Darrein Preſentment, and *Juris utrum*) the enqueſt ſhall be taken by default.

CHAP. XLIII.

Commandatory Judicial Proceſs in the nature of new Originals.

I. THus far of meſne Proceſs: Judicial Proceſs in the nature of new Originals (in none of which any Free-hold ſhall ever be recovered, but damages onely) are theſe that follow; Firſt, ſuch as command to do ſomething, as,

II. Re-ſummons, and Re-attachment, to receive in the former plight a ſuit put without day.

III. Theſe may either revive the Original alone, or the whole proceeding by ſpecial words.

IV. All Certificatory Writs.

V. *Certiorari*, to remove a Record out of a Court of Record into the Chancery.

VI. Writs to remove ſuit out of the Court Barons.

VII. Theſe may be without ſhewing any cauſe in the Writ, if the remove be at the Plaintiffs ſuit; but not without ſhewing good cauſe in the Writ, if it be at the Defendants ſuit.

VIII. Theſe

VIII. These are to remove Pleas, by Writ, or by Plaint.

IX. Of the first sort are *Tolt* and *Pone*.

X. *Tolt*, or *Tollas*, is for the Plaintiff to remove a Writ of Right out of the Lords Court into the County Court.

XI. A *Pone* is to remove into the Common-place in all other cases.

XII. But a *Pone*, to remove a Replevin by Writ out of any other Court Baron then the County Court, cannot be without shewing cause.

XIII. Of the second sort are a *Recordare*, and *Accedas ad Curiam*; in both which, nothing but the Plaint shall be removed.

XIV. A *Recordare* is to remove Plaints in the County Court.

XV. An *Accedas ad Curiam* is to remove Plaints in any other Court Baron.

XVI. This also (upon good cause shewed in the Writ) lieth for a Tenant to remove the Plea in Writ of Right out of the Lords Court immediately into the Common-place.

XVII. A *Mittimus*, to send a Record out of the Chancery into another Court of Record.

XVIII. But the Chancellor may send such a Record by his own hands (without any *Mittimus*) if he please.

XIX. A *Procedendo*, to proceed in suits.

XX. Of this nature is a Writ of Consultation, to proceed in the Spiritual Court, when one suing there for matters belonging to that Court, is restrained to prosecute the suit.

XXI. A Writ of Mainprise, to set at liberty one bailable, finding bail to answer the Action.

XXII. Such persons bailable be they which are taken upon a *Capias* Original.

XXIII. But not the Defendant in Appeal of Mayhem, if the mayhem be heinous; nor the principal in an Indictment or Appeal of Felony; nor the accessary after the attainder of the principal, nor any in high Treason.

CHAP. XLIV.

Other Judicial Proceſs of the like nature.

I. A Writ of Recaption, for him whoſe goods being diſtrained before for rent or ſervices, are diſtrained again for the ſame thing; hanging the Plea in the County Court, or before the Juſtices.

II. A Writ *De magna Aſſiza eligenda*, to the Sheriff, to ſummon four Knights to chooſe the Grand Aſſize, when the *Miſe* is joyned thereupon in a Writ of Right.

III. And this is a meer Judicial Writ iſſuing out of the Common-place, when the Plea hangeth there.

IV. A Certificate of Aſſize, upon an imperfect Verdict given in an Aſſize, to bring in the ſame Jurors to give a more perfect one.

V. A *Proprietate probanda*, unto the Sheriff, to enquire whether the property be to the Plaintiff or Defendant, when upon a Replevin ſued, the Defendant claimeth property.

VI. And this alſo may be meer Judicial, iſſuing out of the Kings Bench, or Common-place, and returnable there.

FH
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CHAP. XLV.

Prohibitory judicial proceſs in the nature of new Originals:

I. SEcondly, hither belong ſuch Writs, as are prohibitory, or reſtrain from doing ſome thing, where the prohibition it ſelf is in lieu of a ſummons, and after that the proceſs is an Attachment and Diſtreſs: Of this ſort are

II. Prohibitions to reſtrain the party from ſuing in an inferiour Court, that ought not to hold plea of it.

III. Such a prohibition is an *indicavit* for the defendants Patron, when the right of advowſon in any part of ones tithes is in demand in a ſpiritual Court, between two Clerks, claiming from ſeveral Patrons.

IV. A *Superſedeas*, to ſtay any further proceeding in a ſuit.

V. Of this nature are a writ of peace, for the tenant upon a writ of Right brought in the Lords Court, vouching one to warranty out of the power of that Court, which is called a *Forraine Voucher*, or joyning the *miſe* upon the grand Aſſize, to have the matter reſpited until the Juſtices in *Eyre* come thither; which writ if he bring not after ſuch voucher or *miſe* joyned, he loſeth his tenancy.

VI. *De libertate probanda*, for the Defendant upon a *Nativo habendo* in the County Court claiming to be frank, to the Sheriff, to adjourn the plea before the Juſtices in *Eyre*.

VII. *Identitate nominis*, for one moleſted by a ſuit againſt another of the ſame name.

VIII. Protections *cum clauſula volumus*, when the King (in reſpect of the defendants being in his ſervice) taketh him into his protection for one year to be free from all ſuits.

IX. Therefore ſuch a protection ſhall for that time ſave all defaults.

X. Howbeit writs of Dower, *Quare impedit*, Aſſizes of novel diſſeiſin, and pleas before the Juſtices in *Eyre* are accepted.

XI. This kind of protection is double, *viz. Protectio quia profecturus*, when he is to go beyond the Sea in the Kings buſineſs.

XII. And *Protectio quia moratur*, when he ſtayeth there about it.

XIII. Of this nature alſo is a protection *quia in priſona*, when being ſent beyond the Sea in the Kings Wars he is there taken and detained in priſon.

XIV. *The King may take his Creditor into his protection, that no other Creditor ſhall ſue or arreſt him, till the King be ſatisfied.*

XV. *He may alſo by a writ called* Warrantia Dei, (*rehearſing that one which ſhould appear in proper perſon, is in ſervice*) *will, that for one day, no default be recorded upon him.*

XVI. *Eſſoin de malo lecti*, which is a writ to warrant an Eſſoin of lying ſick a bed, caſt by the tenant in a writ of right, commanding four Knights to ſee him; and if he be ſick, to give him adjournment of a year and a day.

XVII. A *Ne admittas*, for either party in a *Quare impedit*, or Aſſize of Darrein preſentment, to the Ordinary, not to admit the others Clerk, till the matter be diſcuſſed.

XVIII. This writ muſt be ſued within ſix months: otherwiſe the Ordinary may preſent by lapſe.

XIX. A *Quare incumbravit*, for him that ſueth a *Ne admittas*, and afterwards recovereth in a *Quare impedit*, againſt the Ordinary for incumbring the Church, contrary to the *Ne admittas*.

CHAP.

CHAP. XLVI.

The judgment.

I. THis far of ſuit: Judgment is the Courts final determination of the ſuit.

II. Upon judgment againſt the King in a petition, he is preſently out of poſſeſſion.

III. In a writ of right, the judgment after iſſue joined is final on either ſide.

IV. *Againſt the King, judgment is not final, but is alwayes with a* Salvo jure Regis.

V. Recovery in a writ of right, binds all ſtrangers, not claiming within a year.

VI. Tenant for life ſuffering a wrongfull recovery, it ſhall not prejudice his right that hath the Inheritance, though he prayed in aid, and make default.

VII. For after the death of tenant for life, he may falſifie it by action of *ad terminum qui preteriit*, or writ of right, which is called *falſifying* of a recovery.

VIII. In a writ of Dower feme Guardian in Soccage againſt Gua dian by Knight-ſervice, ſhe ſhall at his prayer be adjudged to endow her ſelf wholly of the land in ſoccage, and this is called Dower *de la plus beale*.

IX. A debt acknowledged in a Court of Record either to the King, or a common perſon, is in the nature of a judgment, and called a *Recognizance*.

X. In appeals of mayhem, and in Indictments or appeals of felony, the acceſſory ſhall not be compelled to anſwer, till attainder of all the principals.

XI. He that is, or (by poſſibility) may be within Orders, namely, a Deacon at the leaſt, may have the benefit of his Clergy, if he be found culpable of any barefelony, where life and member is to be loſt.

XII. This poſſibility (there being no other impediment) ſhall be tried by the Judges by his ableneſs to read a verſe.

XIII. Clergy is the delivering of him to the Ordinary to be kept in prison.

XIV. If it be before judgment (in which case he is called a *Clerk convict*) he shall be tried there by a Jury of Clerks, and therefore purging himself shall go at large.

XV. Not purging himself, but being found culpable by those Clerks, he shall be onely degraded.

XVI. But upon an appeal, no purgation shall be allowed.

XVII. A Clerk convict shall answer to any offence committed before.

XVIII. *A Clerk convict forfeiteth his chattels.*

XIX. *Notice must be given to the King of the time, before the party make purgation.*

XX. If the Clergy be after judgment (in which case he is called a *Clerk-attaint*) he shall remain in perpetual prison.

XXI. Outlawry is a judgment in it self.

XXII. So is abjuration.

XXIII. The offendor upon a presentment in a Leet, or Sher ffs turn, shall be amercied.

XXIV. The Defendant in an appeal of Felony, being acquitted, shall have judgment also to recover damages against the Plaintiff.

XXV. The Plaintiff recovering in a suit, shall be allowed his costs.

XXVI. These judgments have their judicial Writs belonging to them, both meer judicial writs for the execution of them, and new originals in the nature of judicial writs, to undo some matters concerning judgments.

XXVII. Meer judicial Writs in real or personal actions, are either such as lie onely within the year and day after the judgment rendred, or a *Scire facias*.

XXVIII. Those

XXVIII. Those of the first sort are between the party to the recovery, and in the same Court where the recovery was.

XXIX. Of this kind are upon recovery in real and mixt Actions.

XXX. *Habere facias seisinam*, to put him in possession upon a Free-hold recovered in an Assize, *Præcipe quod reddat, &c.*

XXXI. A Writ to the Bishop to admit ones Clerk upon a Presentation recovered in a *Quare impedit*, or Assize of *Darrein Presentment*.

XXXII. Those upon a recovery in personal Actions are of two sorts, *viz.* to have execution of his possessions, or against his body.

XXXIII. Execution of his possessions, is either of his lands, or chattels, or both.

XXXIV. That of the land, is either of the land it self, or of profits out of the land.

XXXV. Execution of the land it self, is an *Habere facias possessionem*, upon a term of years recovered in an *Ejectione firma, &c.*

XXXVI. Execution of his chattels is a *Fieri facias*, to levie execution of his goods and chattels onely.

XXXVII. Execution of his lands and chattels, is a *Levari facias*, to levie execution of the profits of his lands and chattels.

XXXVIII. Here execution shall be of any land which the party had the day of the judgment rendred; but for chattels, (though it be a lease for years) onely those which he had the day of he execution sued.

XXXIX. But in Court Barons execution is onely by Distress, and impounding till the party be satisfied.

XL. The King may have a *Distringas*, to levie an Amerciament, or such like, by distress and sale, whether it

it be an amerciament in the Leet, or Sheriffs turn, or otherwiſe.

XLI. Execution againſt the body is a *Capias ad ſatisfaciendum*, to take the body in execution for ſatisfying of the party.

XLII. This is onely (in a perſonal Action) where a *Capias* lay.

XLIII. Here an *Exigent* ſhall be awarded upon the firſt *Capias*.

XLIV. *Of this nature are two ſpecial Writs by the Kings Prerogatory*, Capias pro fine Regis, *and* Capias utlagatum.

XLV. *Capias pro fine*, when the party is adjudged to pay a fine to the King.

XLVI. *Capias utlagatum*, to take one that is outlawed.

XLVII. Theſe are the Judicial Writs within the year and day.

XLVIII. A *Scire facias* is to warn the Defendant, upon recovery in real Actions, to ſhew cauſe why the Plaintiff ſhould not have execution.

XLIX Here, upon a *Nihil* returned, execution ſhall be preſently upon the parties to the Judgment.

L. In caſe of life, the Judge may command execution to be done without any Writ.

LI. A woman quick with child ſhall for once (and no more) be reſpited execution.

LII. Here the trial ſhall be by a Jury of women, and the Writ for it is called, A Writ *De Ventre inſpiciendo*.

CHAP.

CHAP. XLVII.

A Writ of Errour, False Judgment, Attaint, Audita Querela.

I. THe new Originals in the nature of Judicial Writs to undo some matters concerning Judgments, are either Writs grounded upon Errour, or an Attaint, and *Audita querela.*

II. Writs grounded upon Errour, are a Writ of Errour, and false Judgment.

III. Both these lie upon any errour in the proceeding.

IV. But errour in process may the same term be reformed in the same Court.

V. The process here is a *Scire facias.*

VI. The party bringing a Writ to reverse Errour in the Judgment, may have a *Supersedeas* to stay execution till the errour be discussed.

VII. A Writ of Errour is upon an errour in a Court of Record.

VIII. This may be sued in the Kings Bench, or Parliament.

IX. In the Kings Bench, when the errour is in the Common-place, or other inferiour Court of Record.

X. In the Parliament, when the errour is in the Kings Bench, and this is returnable before the King and the Lords onely.

IX. A Writ of false Judgment is upon errour in a base Court.

XII. An Attaint is to enquire, whether a Jury of twelve men gave a false Verdict.

XIII. This must be brought in the life of him for whom it passeth, and of some of them that gave it.

XIV. It

XIV. It lieth onely in perſonal Actions other then Treſpaſſes.

XV. The Jury here (called the *Grand-Jury*) are twenty four, who are to be warned the firſt day.

XVI. The Proceſs againſt the party is Summons, Re-ſummons, as in Mordauncestor, *&c.*

XVII. The Proceſs againſt the petty Jury, is *Venire facias*, and Diſtreſs.

XVIII. The petty Jury muſt be all preſent when the Grand Jury is taken, and may plead in bar of the Attaint, but not in abatement of the Writ.

XIX. The Plaintiff in the Attaint can give no more Evidence then was given at the firſt; but the Defendant, in affirmance of the firſt Verdict, may.

XX. *Audita querela*, is for one being, or to be in execution, to relieve him upon good matter of diſcharge, which he hath no means to plead.

XXI. The Proceſs where the *Audita querela* is ſued before execution, is a *Venire facias*, and Diſtreſs; and upon default after appearance and Plea pleaded, a *Diſtringas ad audiendum Judicium*; for thereby judgment is to be given againſt him.

XXII. In caſe of an *Audita querela* ſued before Execution, he may have a *Superſedeas*, upon good matter of diſcharge ſurmized in the Writ of *Audita querela*, to ſtay for once the execution upon ſureties.

XXIII. After execution the Proceſs is onely a *Scire facias*; for if the Proceſs ſhould be by Diſtreſs infinite, peradventure the party ſhould loſe iſſues to keep the others body in perpetual priſon.

FINIS.

STATUTES.

CHAP. I.

Rule 1. IN the second Volume of old Statutes is a long Act made *Anno* 12 *E.* 1. entituled *Statuta Walliæ*, whereby it appeareth, that *Wales* was then incorporated into *England*: there are also many good Lawes concerning the division of *Wales* into Counties, also for trials of Actions, together with divers forms of Writs, and the proceeding thereupon much like the Laws of *England*, &c.

Wales incorporated into England 12 Ed. 1

Stat. 27 *H.* 8. 26. Incorporateth *Wales* into *England*, and the other Statutes that concern it, are 28 *E.* 3. 2. 9 *H.* 4. 4. 2 *H.* 5. *Stat.* 2. 5. 26 *H.* 8. 4. 26 *H.* 8 6. 27 *H.* 8. 7. 33 *H.* 8. 13. 34. 35 *H.* 8. 26. 18 *El.* 8 27 *El.* 9.

Rule 35. *Stat.* 37 *H.* 8. 21. By assent of Ordinary, Incumbent and Patron under their Seals, an union may be made of two Churches, being not above six pounds yearly value in the Kings Books, nor distant one from another above a mile; saving to the King his tenths and first fruits.

Union of churches by patron Incumbt & ordinary

In corporate Towns, it must be by assent of the Corporation.

By Assent of corporation

If such a poor Parish will within a year assure by writing

union void

ting to the Incumbent and his ſucceſſors, 8 *l.* yearly the union ſhall be void.

mortmain.

Rule 36, &c. *Magna Charta*, 36. 9 *H.* 3. If any ſhall give lands to a religious houſe, the grant ſhall be void, and the land forfeit to the Lord of the fee.

entry for the Lord within

Stat. of Gloceſter, or *de religioſis*, 7 *E.* 1. If lands be alienated in mortmain, the immediate Lord hath a year to enter, the next Lord half a year, and ſo from Lord to Lord, till it come to the King.

recovery by default in a ſuit

Weſtm. 2. 32. 13 *E.* 1. Eccleſiaſtical perſons being debarred from the former Statutes to obtain lands in Mortmain by alienation, endeavoured fraudulently to obtain them by default in a ſuit: And therefore in ſuch caſe it was ordained by this Statute, that it ſhould be enquired by the Country, whether or no the demandant had juſt title; and if ſo, then he ſhould recover ſeiſin; but if otherwiſe, the Lord of the fee ſhould enter as before.

Grant of alienation

Weſtm. 2 41. The King (founder of a religious houſe) may ſeize Lands which he gave them, if they alien.

Amortize ad quod damnum

Ordinatio de perquirendis libertatibus. 27 *E.* 1. Before licences are obtained to Amortize lands, the writ *Ad quod damnum*, ſhall iſſue out of the Chancery to inquire concerning the ſame, *&c.*

Meſne Lords their conſent

The Statute of Amortizing of Lands, 34 *E.* 1. Lands ſhall not be aliened in Mortmain, where there be mean Lords without their conſents declared under their ſeals; neither ſhall any thing paſs, where the donor reſerveth nothing to himſelf, or where the inquiſition is made, and returned without warrant, *viz.* without the writ Original returned with the inquiſition, *&c.*

writs for mortmain upon petition in parl.

The Statute of writs for making inquiſitions of Lands to be put in Mortmain, Incerti temporis, Writs of *Ad quod damnum*, for amortizing lands ſhall not be granted, but upon petition in full Parliament.

Statutum de Clero, 3. 18 *E.* 3. If Prelates, Clerks beneficed

neficed, or other people of religion, being impeached for purchasing lands in mortmain, shew the Kings charter of licence, and process thereupon made by an Inquest of *Ad quod damnum*, or of the Kings grace, or by fine they shall be in peace: And albeit they cannot sufficiently shew that they have entred by due process licence to them granted, yet they shall be well received to make a convenient fine for the same.

Stat. 15 *R.* 2. 5. Lands converted to a Church-yard, or purchased to the use of any spiritual persons Guilds, or Fraternities, or by a corporation, shall be within the Statute of *Gloucester*, 7 *E.* 1.

CHAP. II.

Rule 3. *Præcog. Reg.* 9 17 *E* 3. The King shall have the custody of the lands of natural fools, taking the profits thereof without waste, and finding them necessaries, and after their death, shall render them to the right heir. *custody of fooles Lands*

Præc. Reg. 10. The King shall provide, that the lands of lunaticks be safely kept without waste, and that they and their families (if they have any) shall be maintained with the profits thereof, and that the residue be kept for their use, and delivered unto them when they become to be of right mind: so as their lands shall not be alened, neither shall the King have any profit thereof to his own use: But if they die in such estate, the residue shall be distributed for their souls by the advice of the Ordinary. *lunaticks lands*

Rule 4. *Stat.* 1 *R.* 3. 1. All grants, conveyances, recoveries, and other assurances, made by *Cesty que use* (being of full age, *Compos mentis*, and at large) shall be good against him and all others claiming as his heir or heirs, or to his use, saving the right of all others. *Cesty que use may bar his grants good*

Stat. 4 *H.* 7. 17. The heir of *Cesty que use* (of

by him shall be warr'd on by his

Knight-ſervice land) ſhall be in ward, and pay relief.

Stat. 19 *H.* 7. 15. Execution upon judgment, ſtatute, or recognizance ſhall be good againſt *Ceſty que uſe*.

The heir of *Ceſty que uſe*, ſhall pay relief, heriot, &c.

Ceſty que uſe being a Bond man, the Land ſhall be ſeiſed on by the Lord.

Stat. 27 *H.* 8. 10. Where any be ſeiſed to the uſe or truſt of another, *Ceſty que uſe*, or truſt ſhall have the poſſeſſion in ſuch quality, manner and condition as he had the uſe or truſt: ſo when any be ſeiſed to the uſe or intent that another ſhall have a yearly rent of the ſame lands, *Ceſty que uſe* of the rent ſhall be deemed in the poſſeſſion thereof, of like eſtate as he had that uſe.

Stat. 27 *H.* 8. 16. Bargains and ſales to raiſe an uſe of Inheritance or freehold, muſt be by deed indented, and inrolled within ſix months in a Court of Record at *Weſtm.* or in the County where the land lieth.

Rule 9. *Stat.* 50 *E.* 3. 6. Fraudulent Aſſurances of lands or goods to deceive Creditors, ſhall be void, and the Creditors ſhall have execution thereof, as if no ſuch gift had been made.

Stat. 3 *H.* 7. 4. All deeds of gift of goods and chattels, made of truſt to ones own uſe ſhall be void.

Stat. 13 *El.* 5. Every gift, grant, bargain, and conveyance of lands or chattels, or of a leaſe, rent, common, or other profits out of them, and every bond, ſuit, judgment and execution had or made for the defrauding of any perſons juſt action, ſuit, debt, account, damage, penalty, forfeiture, heriot, mortuary, or relief, ſhall be void againſt that perſon, his heirs executors, *&c.*

The parties, or privies (knowing ſuch a fraudulent gift) which ſhall juſtifie it to be done *bona fide*, or ſhall alien ſuch things ſo to them conveyed, forfeit one years value of the lands or profit out of it, and the whole value of the goods and chattels, and the ſum of ſuch

covenous

covenous bond, and ſhall have half a years impriſonment.

This Act extends not to common recoveries, nor vouchers in a *Formedon*, nor to any gift, &c. *bona fide*, and upon good conſideration to any perſon, not knowing of the fraud.

Stat. 27 *El.* 4. Every conveyance, grant, charge, leaſe eſtate, incumbrance, or limitation of uſe of lands, tenements, or hereditaments made for the defrauding of purchaſers of the land it ſelf, or any part, or profit out of it, ſhall be void againſt the perſon ſo purchaſing for money, or other good conſideration, and againſt all claiming under him, with penalty, as in the former Statute.

This extendeth not to the avoiding of any grant, *&c.* upon good conſideration and *bona fide*.

If any ſuch conveyance, *&c.* be made with a clauſe of revocation or alteration at his pleaſure, by writing, and after he ſhall bargain, demiſe, ſell, grant, convey, or charge the ſame lands, *&c.* for money, or other good conſideration (the conveyance not revoked nor altered) then ſuch conveyance, *&c.* ſhall be void againſt the bargainees, *&c.* and all claiming under them, lawfull mortgages onely excepted.

Rule 11. *Præcog*, *Reg.* 15. 17 *E.* 2. The Kings gift or grant of land, or a manor *cum pertinentiis*, conveyeth not Knights fees, advowſons, or dowers, without expreſs words.

Stat. 1 *H.* 4. 6. In a petition to the King for lands, annuities, offices, *&c.* their value ſhall be therein expreſt; otherwiſe the letters Patents thereupon ſhall be void.

Stat. 18 *H.* 6. 1. All Letters Patents which bear not date the day of the delivery of the Kings warrant into the Chancery, ſhall be void.

Stat. 34 35 *H.* 8. 21. A confirmation of all eſtates ob-

tained by, or conveyed from the King within ſeven years after the fourth of *February*, in the 27. year of his reign, notwithſtanding any miſ-recital, non-recital, *&c.* with divers proviſoes, *&c.* therein contained.

Stat. 1 *E.* 6. 8. Such another Statute for the confirmation of all grants, made, and to be made by E. 6. from the 28. of *January* in the firſt year of his reign, and ſo during his life, with ſuch proviſoes, *&c.* as in the ſaid Act of *H.* 8.

Stat. 4, 5 *P. M.* 1. Another like Statute for the confirmation of grants made and to be made, to or by the Queen, or the King and Queen, from the firſt of *July* in the firſt year of her Reign, and ſo during her life, with proviſoes, as in the former Act.

Stat. 18 *El.* 2. Another like confirmation of all grants made to, for, or by the Queen, or to be made within ſeven years, next after the end of this Seſſion, with like proviſoes, *&c.*

Stat. 43 *El.* 1. Another confimation of grants made by Qu. *Eli.* from the eight of *February*, in the 25. year of her reign, until the end of this Seſſion and a year after.

Stat. 21 *Jac.* 25. The King, *&c.* ſhall not take advantage of Forfeitures againſt his Patentees, before Conmiſſion Proceſs, *&c.*

Stat. 21 *Jac.* 29. A confirmation of Leaſes of the Dutchy lands in *Cornwall.*

Stat. 1 *Car.* 2. Such another for Leaſes thereof, to be made within three years.

CHAP. III.

Rule 6. *Stat.* 32 *H.* 8. 34. Grants of Reverſions may enter upon Farmers for any Forfeiture (or condition) and have like advantages againſt them (by action onely, for any other Covenants, condition, or agree-

agreement contained in the Indenture of their leaſe) as the Leſſors, their heirs, or ſucceſſors might, And the like for the Leſſees againſt the grantees of reverſions. Recovery in value onely excepted.

CHAP. IV.

Rule 9. *Stat., 6 H. 8. 15.* If any make ſuit to the King for lands, offices, or other things, formerly granted to any perſon during the Kings pleaſure (the firſt Patentee being ſtill in life) the laſt grantee ſhall expreſs in his Petition or Pattent the former Pattent, and the determination of the Kings pleaſure concerning the ſame, otherwiſe the laſt grant ſhall be void.

Rule 15, *Gloceſter 7. 6 E. 1.* If a woman alien her dower in fee or for life; the heir or other perſon, to whom the land ought to revert, ſhall recover againſt the Alienee in her life time.

CHAP. V.

Rule 5. *Merton, 9. 20 H. 3.* A child born before Marriage is a baſtard, albeit the common order of the Church be otherwiſe.

Stat. 9 H. 6. 11. No writ ſhall be awarded to the ordinary to certifie Baſtady, before three Proclamations be made in Chancery in three months, *viz.* once every moneth, that all perſons, who have any thing to object againſt the party for baſtardy, ſhall ſue to the Ordinary for that purpoſe.

Rule 8. *Merton, 5. 10 H. 3.* Uſury ſhall not run againſt any within age from the time of the death of his Anceſtor, (whoſe heir he is) unto his lawfull age; yet the principal with uſury due before the Anceſtors death ſhall be paid, notwithſtanding this Act.

9 **Rule 10.** *Stat.* 32 *H.* 8. 33. The dying ſeized of a diſſeiſor with force, and without title, taketh not away the entry of him and his heirs, who at the time of ſuch diſcent had good title of Entry, unleſs the diſſeiſor had peaceable poſſeſſion by five years next after ſuch diſſeiſin.

Rule 14. *weſtm.* 2. 1. 13 *E.* 1. The will of the giver (according to the form in the deed of gift manifeſtly expreſſed) ſhall be from hence-forth obſerved: So that they to whom the land was given under ſuch condition, (*viz. that if the donee or donees ſhould die without iſſue, that then the land ſhould revert to the donor*) ſhould have no power to alien the land ſo given, but that it ſhall remain to their iſſue after their death, or ſhall revert to the giver, or his heirs, if iſſue fail; neither ſhall the ſecond husband of any ſuch woman, (*being donee in tail*) from henceforth have any thing of the land ſo given upon condition after the death of his wife, by the Law of England; neither ſhall the iſſue of ſuch huſband and wife ſucceed in the Inheritance; but immediately after the death of the husband and wife, to whom the land was given, it ſhall return to their iſſue, or to the giver, or his heirs, as aforeſaid.

A Fine levied of ſuch lands ſhall be void in Law; and the heir or reverſioner (albeit they be of full age, in *England*, and out of priſon) need not make their claim: Howbeit, this clauſe concerning a fine is altered by 32 *H.* 8. 39. which ſee *infra*.

Stat. 34 & 35 *H.* 8. 20. No common recovery of lands in tail, of the gift or other reverſion of the King or his progenitors (though it be with voucher againſt tenant in tail, the remainder or reverſion being in the King at the time of the recovery) ſhall bind the heir in tail, or bar him of his entry: Tenant in tail ſhall take no advantage for any recompence in value againſt the vouchee or his heirs.

Rule

Rule 24 *Mag. Cart.* 7. 9 *H.* 3. The wife, after the death of her husband, shall abide in his chief messuage forty dayes, within which time her dower shall be assigned her: If the chief messuage be a Castle, then she shall have a competent house provided her, till her dower be assigned.

Westm. 2. 34. 13 *E.* 1. A woman that leaveth her husband and abideth with an adulterer, shall not have Dower; unless the husband (voluntarily and without coertion of the Church) reconcile her, and suffer her to dwell with him.

Stat. 11 *H.* 7. 20. If a woman that hath an estate in Dower for life, or in tail joyntly with her husband, or onely to her self, or to her use in any lands, *&c.* of the inheritance or purchase of her husband, or given to the husband and wife by the husbands ancestors, or any seised to the use of the husband, or his ancestors, do sole (or which an after taken husband) discontinue or suffer a recovery by Covin, it shall be void, and he to whom the land ought to belong after the death of the said woman, may enter (as if the woman were dead) without discontinuance or recovery: Howbeit, the woman may enter after the Husbands death, but if the woman were sole, the recovery or discontinuance barreth her for ever.

This Act extends not to any recovery or discontinuance with the heir next inheritable to the woman, or by his consent of Record enrolled.

Stat. 21 *H.* 8 10. Where an estate is made in possession or use to Husband and wife, and his heirs, or the heirs of their bodies, or of one of their bodies, or to them for their lives, or for the wives life of her joynter; In any of these cases she shall not have Dower: Howbeit upon a lawfull eviction of that joynture, she shall be endowed according to the rate of her husbands land, whereof she was dowable.

Such

Such a Joynture being made after marriage, the wife (after the husbands death) may refuse it, and betake her to her Dower, unless such Joynture be made by Act of Parliament.

CHAP. VII.

Rule 7. *Stat. de districtione Scaccarii*, 51 *H.* 3. The owner of impounded cattel may give them food without disturbance.

A distress taken for the Kings debt, shall not be sold within 15. dayes, and upon shewing of a Tally, and giving security for his appearance in the Exchequer upon the next accompt, the distress shall cease: The Sheriff shall also attach the party that received the debt, to be there likewise at the same time.

Neither draught cattel, nor sheep shall be distrained (except for *damage-feasant*) so long as other goods may be found to satisfie the debt: Distresses shall be reasonable: The Sheriff shall answer all debts received, and where the Sheriff chargeth himself, the debt shall be quitted.

Marlbr. 15. 52 *H.* 3. It shall not be lawfull for any (except the King and his Officers, having special authority) to take distresses out of his fee, or in the Kings high-way, or in the common street.

Marlb. 4. None shall drive a distress out of the County, wherein it is taken, in pain to be fined, and to make recompence to the party grieved: none shall take an unreasonable distress, in pain of amerciament.

Westm. 1. 16. 3 *E.* 1. None shall drive a distress out of the County, or distrain wrongfully upon the penalties provided by the Statute of *Marlebr.*

Westm. 2 36. 13 *E.* 1. None shall procure any to distrein another to make him appear at the County Court or any other inferiour Court, on purpose to vex him, and

and put him to charge and trouble, in pain to make fine to the King, and to pay the party grieved treble damages.

Weſtm. 2. 37. 13 *E.* 1. No diſtreſs ſhall be taken but by Bailiffs known and ſworn, in pain to reſtore damages to the party grieved, and be grievouſly puniſhed by the King.

Artic. Cler. 9. 9 *E.* 2. Diſtreſſes ſhall not be taken in the High-way, nor in the ancient fees of the Church.

Stat. 1, 2 *P. M.* 12. No diſtreſs of Cattel ſhall be driven out of the hundred, rape, wapentake, or lath, where it is taken, except to a pound *Overt* within the ſame Shire, not above three miles diſtant from the place where it is ſo taken: Neither ſhall a diſtreſs be impounded in ſeveral places, whereby the owner may be conſtrained to ſue ſeveral *Replevins* for the delivery thereof, in pain to forfeit to the party grieved for every offence committed againſt the Act 5 *l.* and treble damages.

None ſhall take above 4 *d.* for the poundage of one whole diſtreſs (and where leſs is uſually taken, to take leſs) in pain to forfeit to the party grieved 5 *l.* and ſo much money as is taken above 4 *d.*

Rule 24. *Quia emptores terrarum*, 18 *E.* 1. In all Feoffements to one and his heirs, the Feoffee ſhall hold his land, and the chief Lord of the fee by the ſame ſervices that the Feoffer held before.

Here if the Feoffement be made of parcel, he ſhall hold of the chief Lord *pro particula*, according to the quantity of the land, and the Feoffer ſhall be ſet free for that part.

Rule 27. *Mag. Cart.* 31. 9 *H.* 3. If a a Barrony, *&c.* Eſcheat to the King, the tenants that hold of the ſame (not having other lands that hold of the King in chief) ſhall pay like relief, and do like ſervices to the King after ſuch Eſcheat, as they paid or did to their former Lords, and not otherwiſe.

Stat.

Stat. 1 *E* 6.4. So alſo it is, when a Seigniory cometh to the King by attainder, conviction, outlawry, diſſolution or ſurrender.

Stat. 1 *E.* 3. *Stat.* 2. *Cap* 12. Lands holden of the King in chief, and alienedwithout licenſe, ſhall not be forfeited, but a reaſonable fine ſhall be taken (of ſuch lands ſo alienated) by due proceſs in Chancery. And *cap.* 13. lands holden of the King as of ſome Honor ſhall not be taken into the Kings hands as if they were holden of the King in chief, as of his Crown.

Rule 31. *Stat.* 33 *H.* 8 22. A fee ſet down for reſpiting of Homage in the Exchequer or other Courts.

Rule 35. *Marlebr.* 9. 52. *H.* 3. None enfeoffed by deed ſhall be diſtreined to do ſuit to his Lords Court, unleſs he be bound to do it by the form of his deed, or he or his anceſtors have uſed to do it, before the Kings firſt voyage into Britain, *being about* 39. *years and an half before the making of this Statute.*

The eldeſt Copercener ſhall onely do ſuit of Court, and the other parceners ſhall be contributary; Alſo one Joint-tenant or tenant in Common ſhall do the ſuit and the reſt ſhall contribute.

Rule 38. *weſtm* 35. Reaſonable aid ſhall be 20 *s.* for a whole Knights fee, and as much for 20 *l.* land in ſoccage; and ſo more or leſs, according to that Rate.

It ſhall be levied at 15. years age of the ſon, and 7. years of the daughter; and if the Father levy it, and dye before the marriage of the daughter, the fathers executors ſhall be charged therewith, and if they have not aſſets, the heir ſhall be therewith charged.

Stat. 25 *E.* 3. *Stat.* 5. 11. Reaſonable aid to make the Kings eldeſt ſon a Knight, and to marry his eldeſt daughter ſhall be levied of all lands holden of the King (without Mean) according to the rate in the former Statute.

Rule 43. *Marlbr.* 17. 52 *H.* 3. Guardian in ſoccage ſhall

shall make no waste, sale, or destruction of the heirs inheritance, but safely keep the same to the use of the heir, and when he comes to age shall answer the issues thereof by a lawfull accompt, saving his reasonable costs: neither shall such Guardian sell the marriage of such heir, but to his advantage.

Rule 48 *Magn. Cart.* 3. 9 *H.* 3. The Lord shall take homage of the heir before he have the Wardship; and such heir after he hath been in Ward, shall (at his full age of 21. years) have his inheritance without relief or fine; and if the heir within age be made a Knight, yet his land shall remain in ward, until his full age aforesaid.

Marlebr. 6. 52 *H.* 3. If one enfeoffe his heir within age to cause the Lord to lose his Wardship, and die, yet the Lord shall have the Wardship.

So when a fraudulent feoffment is made by a tenant upon condition, to revert (after certain years) to him and his heirs, if the feoffees pay not a certain sum to the value, or more then the value of the lands; In such case the Lord shall have a writ *de Custodia reddenda*: And if (being able to aver this matter) he recover, yet the feoffees shall have the land again, when the heir comes to age; Howbeit, the Lord not being able to aver it, shall render the feoffees their costs and damages.

Stat. 32 *H.* 1. Two Jointenants or more holding of the King, and he that hath the fee dyeth, the King shall presently have the Ward-ship and marriage of the body of his heir, if he be within age. Saving to every woman her dower of two parts of those lands, divided from the third part (as in that Statute is directed) and saving to the King during the wards minority, the reversion of such Jointenants, and tenants in dower.

Rule 50 *Merton*, 6. 20 *H.* 3. If any heir (14. years old, or above) marry himself without licence of his Lord

Lord to defraud him of the marriage, and the Lord offer him a convenient marriage without diſparagement, the Lord ſhall retain the land beyond the term of his full age, untill he may receive the double value of the marriage.

If a Lord marry the heir within 14. years of age, whereby he is diſparaged, he ſhall loſe the Wardſhip, and the profits of his lands ſhall (by the Wards friends) be converted to the Wards uſe.

Merton 7 20 *H.* 3. If an heir will not marry at the requeſt of the Lord, he ſhall pay to the Lord as much as his marriage is worth; for (of right) the marriage of an heir within age pertaineth to the Lord.

Weſtm. 1. 22. 3 *E.* 1. The Lord may hold the land of heirs female two years after their age of 14. within which two years if he marry them not, they ſhall go quit without giving any thing for the wardſhip or marriage, and if they will not except a convenient marriage tendred by the Lord, he ſhall hold the land till their age of 21. years, and over, until he have taken the value of the marriage.

Stat. 4 5. *P. M* 1. None ſhall take or convey, or cauſe to be taken or conveyed away any maid or woman child unmarried, being within the age of 16 years, out of the cuſtody and againſt the will of the father or mother of ſuch child, or of the perſon, to whom the father of ſuch child (by his laſt will, or other act in his life time) hath appointed the governance of ſuch child (except ſuch taking ſhall be (without fraud) by or for the Maſter or Miſtreſs of ſuch child, or her Guardian in Soccage or Chivalry, in pain of two years impriſonment without Bail, or elſe to pay ſuch fine as ſhall be aſſeſſed by the Council of Star-chamber.

None ſhall take away or deflower any ſuch child, or againſt the will of her father, if he be living, or of her mother (having the cuſtody of her) if her Father be dead

dead, contract matrimony with any ſuch Child, (except by the title of Wardſhip) in pain of five years impriſonment, or to pay a fine to be aſſeſſed by the ſaid Council. The Fines are to be divided betwixt their Majeſties and the proſecutor.

The ſaid Council and Juſtices of Aſſize have power to hear and determine theſe offences.

If any ſuch child (above the age of 12. and under the age of 14) conſent to any ſuch contract of matrimony, the next of the kin to whom her inheritance ſhould come, ſhall enjoy it during her life; but after her deceaſe, it ſhall revert to the right inheritor, other then to him, that did ſo contract matrimony. This Act ſhall not prejudice any cuſtom in *London*, or any other City or Town concerning Orphans.

CHAP. VIII.

Rule 6. *Merton* 4. 20 *H.* 3. Lords of waſtes, or commonable woods or paſtures may approve againſt their Tenants part thereof, ſo as they leave ſufficient Common beſides, together with ingreſs and regreſs to enjoy the ſame.

Weſtm. 2. 46. 13 *E.* 1. Such a Lord may prove in like ſort againſt his neighbours which have common appurtenance, and for a Windmil, Sheepcote, Dairy, enlarging of a Court or Curtilage none ſhall be grieved by Aſſize of novel diſſeiſin.

If a ditch or hedg made for that purpoſe be thrown down, and the parties offending be not diſcovered by the Towns adjacent, they ſhall make it up again, and render damages.

Stat. 3 *E.* 6. 3. Upon judgment for the Plaintiff in an Aſſize upon any branch of the ſaid Statutes of *Merton* and *Weſtm.* 2. the Court ſhall award treble damages.

This

This Statute shall not extend to houses built before the making thereof, not having above three acres laid to them; nor to a Garden, Orchard, or Pond, not exceeding two acres.

Stat. 43 *El.* 11. All contracts made betwixt Lords and Commoners, of wasts, *&c.* subject to surrounding, shall be good, save where the Queen, *&c.* hath an Interest. This Act shall not be prejudicial to Lords and Commoners in any part of wastes, not assigned to Drainers, *&c.* nor to any Port or Haven.

CHAP. IX.

Rule 3. *Stat.* 19 *H.* 7. 15. Upon a feoffment made to the use of a Villein, the Lord may enter into the land it self.

Rule 7. *Stat.* 9 *R.* 2. 2. In a suit by a Villein against his Lord, the Lord shall not be barred of their Villeins, because of their answer in Law.

Rule 11 *E.* 61. 6. 16. No office or deputation thereof, or of any part thereof, which concerneth the administration or execution of Justice, or the receit, controlement, or payment of the Kings money, or revenue, or any accompt, Aulnage, Auditorship, or Surveying the Kings Lands, or Customs, or Administration, or Attendance in any Custom-house, or keeping any of the Kings Towns, Castles, or Fortress, (being places of strength or defence) or any Clerk-ship in a Court of Record, shall be bargained or sold, or any reward, or agreement of Reward taken for it, upon pain that the seller, *&c.* shall forfeit all his Interest in such office or deputation, *&c.* and the buyer be a disabled person to enjoy the same. And all bonds, *&c.* to be void, as against him, by whom they are made. Howbeit, all Acts executed by any such person offending before he be removed from his Office, *&c.* shall remain good.

This

This Statute extendeth not to any Office of inheritance, or to any parkerſhip, or to any offices to be given by the Chief Juſtices of the Kings Bench or Common place, or by any Juſtices of Aſſize.

CHAP. X.

Rule 2. *Stat.* 27 *H.* 8 24. No ſubject ſhall have authority to pardon any felony, or any acceſſories to felony, or any outlawry for ſuch offences. Nor to make any Juſtices of Eyre, Aſſize, Peace, or Gaol-delivery: All original Writs, Indictments of treaſon, felony, treſpaſs, and proceſs upon the ſame ſhall be onely in the Kings name, and the *Teſte* in his name that hath the Franchiſe.

Every Writ and Indictment whereby any thing is ſuppoſed to be done againſt the peace, ſhall be ſuppoſed to be done againſt the Kings peace onely, and not againſt the peace of any ſubject; the King ſhall have all fines, iſſues, amerciaments and forfeitures loſt by any Officers of Franchiſes for non execution, or inſufficient returns of proceſs, or for any miſdemeanour concerning their office, with many proviſoes in the ſame Statute.

CHAP. XI.

Rule 4. *Weſtm.* 2. 23. 13 *E.* 1. Executors ſhall have a Writ of accompt, and the action and proceſs in the ſame writ, as their teſtator ſhould, if he had lived.

Stat. 4 *E.* 3. 7. 1. Executors ſhall have an action for a treſpaſs done to their Teſtator, as of his goods and chattels carried away in his life, and recover their damages in like manner, as he, whoſe executors they are, might have done if he had lived.

Stat. 32 *H.* 8. 1. He that hath lands, tenements, or hereditaments in ſoccage, and none holden by knight-ſervice, or ſoccage in chief, may deviſe all by his will in writing, or give all by act executed in his life; ſo may he that hath land holden by ſoccage in chief, and other land holden of a common perſon by ſoccage, and none holden by Knight-ſervice: ſaving to the King *primer ſeiſin*, relief, ſuing of the ſame out of the Kings hands, fines for alienation, *&c.* and all other duties for the ſoccage in chief, as before hath been accuſtomed.

He that hath lands, *&c.* holden by Knight-ſervice (whether he have any other lands holden of the King or of any other perſon by Knight-ſervice, or otherwiſe, or not) may do the like for two parts in three to be divided in certainty, for the advancement of his wife or children, and payment of his debts: ſaving unto the King the wardſhip or *primer ſeiſin* of the third part (without any charge, dower, *&c.*) and fines for alienation.

He that hath lands, &c. holden by Knight-ſervice (whether of the King alone by Knight-ſervice, not in chief, or of a common perſon, or ſome holden of the King, ſome of a common perſon) and other land in ſoccage, may deviſe by will, or give by act executed in his life, two parts of that holden by Knight-ſervice, and all the ſoccage: ſaving to the Lord of the land holden by Knight-ſervice the Wardſhip of a full third part thereof, without any charge, dower, *&c.*

Provided, that every one ſhall ſue his livery, and pay his relief and heriot, as if this Act had never been made.

Stat. 34, 35 *H.* 8. The former Statute ſhall be extended to enable deviſes, and other Acts onely of Land in Fee-ſimple.

And

And if the party that maketh the will or other act be seized in Coparcenery, or in the Common; it shall be good for so much, as in himself of right is.

The wardship, relief, *primer seisin*, &c. shall be of lands, that descend immediately after the death of him that maketh the will or other act, as well in fee-tail as fee-simple; And the devise of two parts residue shall be good, though it be of all his fee-simple lands: Such a will shall be good for two parts, (in case onely where two may be devised) though it be made for the whole or more then two parts.

Such wills made by a *feme-covert*, infant under the age of 21. years, Ideot, or one of *non-sane* memory, shall not be good. See also some other things there for the explanation of the former Act of 32 *H.* 8. 1.

Rule 10. *Stat.* 21 *H.* 8. 4. That part of the executors which take upon them the charge of a will, may sell the land devised by the Testator to be sold, albeit the other which refuse will not joyn with them.

Rule 11. *Stat.* 25 *E.* 3. *Stat.* 5. 5. Executors of executors shall have actions of debt, accompt, and goods carried away of the first Testators, and execution of Statute-Merchants recognizances made unto him; And shall also answer for Assets, as the first executors should have done.

Rule 12. *Westm.* 2. 19. 13 *E.* 1. The Ordinary shall satisfie debts, wherein the Intestate was bound, as executors should.

Stat. 31 *E.* 3. 11. The Ordinaries shall depute next friends of the Intestate, to administer his goods, who shall sue and be sued, and be accountables to the Ordinaries, as executors should.

Stat. 21 *H.* 8 5. Administration shall be committed to the widdow of the Intestate, or to the next of his blood, or to both, at the discretion of the Ordinary. The Ordinary

dinary not doing his duty herein forfeiteth ten pounds.

Stat. 43 *El.* 8. If any obtain goods of an Inteſtate by fraud (as by procuring adminiſtration to be granted to a ſtranger of mean eſtate, or not to be found) and not upon valuable conſideration, *&c.* he ſhall be charged as executor in his own wrong as far as the goods or debts extend.

Rule 20. *Weſtm.* 1. 4. 3 *E.* 1. Where a man, dog, or cat, eſcape alive out of the Ship, it ſhall be no wreck; but the things ſhall be prized by the Sheriff or Coroner and delivered to thoſe of the Town, where they be found, to anſwer for them: So as if any within a year and a day prove that the goods are his, they ſhall be reſtored to him.

CHAP. XIII.

Rule 3. *Stat.* 32 *H.* 8. 28. Leaſes made by tenant in tail, or by him who is ſeized in the right of his wife or Church (they being of full age at the time of ſuch a leaſe made) ſhall be good againſt the Leſſors, their wives, heirs, and ſucceſſors.

This Statute ſhall not extend to any leaſe to be made of lands in the hands of any Farmer by force of any old leaſe, unleſs ſuch an old leaſe expired within a year after the making of the new; nor to any grant to be made of any reverſion of ſuch lands, nor to any leaſe of lands, which have been let to Farm 20. years before ſuch leaſe made; nor to any leaſe made without impeachment for waſte; nor for above 21. years, or three lives from the making thereof; and that upon every ſuch leaſe, there be reſerved ſo much yearly rent, as hath been uſually paid within 20. years before ſuch leaſe made: And the reverſioner of ſuch lands, &c. may (after the death of ſuch leſſor, or his heirs) have ſuch remedy againſt

againſt ſuch leſſee, his executors and aſſignes as ſuch leſſor might have had againſt ſuch leſſee.

Provided, that all leaſes made by the husband of land &c. (being the inheritance of the wife) ſhall be made by Indenture in the name of the husband, and wife, and ſhe to ſeal to the ſame, and the rent ſhall be reſerved to the husband and wife, and the heires of the Wife. And here, the husband ſhall not alien or diſcharge the rent, or any part thereof longer then during the coverture, unleſſe it be by fine lived by husband and Wife.

No fine, feoffment, or other act, done by the husband only, of the inheritance or free-hold of the wife ſhall make any diſcontinuance, or prejudice the wife or any other, who is to enjoy the eſtate after her deceaſe, fines levied by the husband and wife onely excepted.

Stat. 1 El. *not printed.* All eſtates made by any Arch-Biſhop, or Biſhop of any Mannors, Lands, &c. parcel of their Biſhoprick, other then to the Queen, &c. and other then for 21 years and three lives from the time of ſuch eſtate made; and whereupon the accuſtomed yearly rent or more ſhall be reſerved, ſhall be void.

Stat. 13. El. 10. All leaſes, conveyances, and eſtates made by any maſter and Fellowes of a Colledge, Dean and Chapter, Guardian of an hoſpital, Parſon, Vicar, or other having any eccleſiaſtical living &c. other then for 21 years, or three lives from the making, and whereupon the accuſtomed yearly rent or more is reſerved, ſhall be void.

Stat. 14. El. 11 The branch of the Statute of 13 El. 10. made to avoid certain Leaſes, ſhall not extend to houſes ſcituate in Corporations, or Market-townes, or the Suburbs thereof, nor to the grounds of ſuch houſes, ſo as they be not the dwelling houſes of the perſons there reſtrained, nor have 10 acres of ground belonging

to them provided, that no leaſes in revertion ſhall be made of ſuch houſes, nor without reſerving the accuſtomed yearly rent at leaſt, nor without charging the leſſee with reparations, nor for a longer term then 40 years: Neither ſhall any ſuch houſes be aliened without purchaſing preſently after other lands in Fee-ſimple of as good value.

Stat. 18 *El.* 11. All leaſes made by ſuch perſons, as are mentioned in 13 *El.* 10. where another leaſe is in being, not to be expired, ſurrendred, or ended within three years next after the making of ſuch new leaſe, ſhall be void: And all Bonds and Covenants for renewing of any ſuch leaſe contrary to this Act, or to the ſaid *Stat.* of 13 *El.* 10. ſhall alſo be void.

Rule 21. *Weſtm.* 2. 5. 13 *E.* 1. Uſurpation of Churches during wardſhip, particular eſtates, Coverture, or Vacancy, ſhall not bar the heir at full age, the reverſioner or remainder in poſſeſſion, the feme-diſcovert, or the ſpiritual perſon in ſucceſſion, from having their writ of Advowſon poſſeſſory, *viz.* a *quare impedit*, or an Aſſize of darrein preſentment, as their anceſtor or predeceſſor might have had, uſurpation had happened in their time; whereas before this Act they were (in ſuch caſes) put to their writ of right of Advowſon.

One and the ſame form of pleading ſhall be uſed in *Darrein preſentment*, and *Quare impedit*, *viz.* if the defendant alledged plenarty of his own preſentation, the plea ſhall not ſtay by reaſon of the plenarty, ſo as the writ be purchaſed within the ſix months; albeit he cannot recover within that time.

Where partition is made upon record, or by fine to preſent by turn, the Coparcener that is diſturbed ſhall not be put to a *Quare impedit*, but may have remedy upon the Roll or fine by *Scire facias*: And amongſt Coparceners, if one preſent twice together, yet ſhall not

not the other be barred, but have his other turn when it falleth.

CHAP. XIV.

Rule 4. *Westm.* 2. 34. 13 *E.* 1. If a man ravisheth a woman married, maid, or other, albeit she did consent after, he shall have judgment of life and member, and here the King shall have the suit.

Stat. 6 *R* 2 6. Both the ravisher and ravished (where she consents after the fact) are disabled to have or challenge any inheritance, dower, or joynt-estate after the death of their husband or ancestor,

In an appeal of Rape, the Husband, father, or next of the blood shall have the suit, and the Defendant shall not be received to wage battail.

CHAP. XV.

Rule 2. *Westm.* 1. 33. 3 *E.* 1. He that publisheth any false news or tales, whereby discord or occasion of discord and slander may grow between the King and his people, or the Nobles, shall be kept in prison, until he hath brought him forth into the Court, that did speak the same.

Stat. 12 *R.* 2. 11. The like for him that telleth false lies of Nobles and great Officers, whereby discord may arise between the Lords and Commons.

Stat. 12 *R.* 2. 11. In the case of these former Statutes, if the party cannot bring forth him that spake the same, he shall be punished by the advice of the Council.

CHAP. XIX.

Rule 4. 31 *E.* 3. *Stat.* 1. 2. If any Man, or Town

charged with the goods of fugitives or felons will (in diſcharge of himſelf) alledg another that is chargeable therewith, he or they ſhall be heard, and right ſhall be done him.

Stat. 1 *R.* 3 3. None ſhall ſeize the goods of any arreſted for ſuſpition of felony, before he be convict or attaint thereof, or the ſame goods be otherwiſe lawfully forfeited, in pain to forfeit to the party grieved double the value of the goods ſo taken, to be recovered by action of debt, *&c.*

Rule 6. 1 *E* 6. 12. The wife ſhall be endowed, albeit her husband were attainted, convicted, or outlawed for treaſon or felony, ſaving the right of others. *But note, that is altered for treaſon,* by 5 *E.* 6. 12.

Rule 12. *Magn. Cart.* 22. 9 *H.* 3. The King ſhall have the land by a year and a day, and then render it to the Lord of the fee.

Præcog. Reg. 16. 17 *E.* 2. The King ſhall have the profits by a year and a day, and alſo the waſting of the tenements by pulling down houſes, cutting down woods, digging up meadows *&c.*

Rule 18 *Stat.* 21 *H.* 8. 7. (made perpetual by 5 *E.* 10.) the ſervant that hath any goods or chattels delivered unto him to keep by his Maſter, and (with an intent to ſteal) doth either go away therwith, or (being in ſervice) imbezils or converts the ſame to his own uſe, ſhall be judged a thief, if the value of the goods amount to 40 *s.* Howbeit, this extendeth not to apprentices or perſons within eight years of age.

Rule 21. *Stat.* 21 *H.* 8. 11. Where a felon robbeth or taketh the money or goods of any, and is thereof found guilty, or otherwiſe attainted upon evidence given by the party himſelf, or others by his procurement; in this caſe, the Juſtices of *G. D.* or other Juſtices, before whom he is ſo found guilty or attainted, have power to award a writ

writ of reſtitution for the money or goods ſo robbed or taken, in like manner, as if the felon were attainted at the ſuit of the party in an appeal.

Rule 23. *Stat. de Malefact. in parcis*, 21 *E.* 1. It is no Felony for Foreſters, &c. to kill malefactors, &c. If they will not ſubmit themſelves. *Stat.*

Rule 25. *Glouceſter* 9 *E.* 1. He that killeth a man by miſadventure, or *ſe defendendo* muſt put himſelf upon the Countrey; and if he be found to have done it ſo, the King (if he pleaſe) may pardon him. *Stat.*

Marlb. 25. 52 *H.* 3. To kill a man by miſadventure ſhall be no murder.

CHAP. XXI.

Rule 3. *Stat. de proditionibus* 25 *E.* 3. *Stat.* 5. It is high treaſon to kill the Chancellor, Treaſurer, &c. *as in the ſecond Rule of this Chapter.* Alſo to counterfeit currant money: To bring falſe money into this Realm counterfeit according to the money of *England* (knowing the ſame falſe) to merchandize or make payment with it. To counterfeit the great ſeal or privy ſeal.

Stat. 1. *Mar. Seſſ.* 1. 6. Seal-manual, privy ſigret, or privy ſeal, ſtrange coin currant in this Realm.

Stat. 1. 2 *P. M.* 11. To bring wittingly falſe forein coin hithers to the intent to uter it within the Realm.

Stat. 5 *El.* 11. To clip, waſh, round, or file any money of this Realm, or currant here: Howbeit, this cauſeth forfeiture of land for life onely; but no loſs of Dower or blood corrupted.

Stat. 18 *El.* 1. To impair, diminiſh, falſifie, ſeal, or lighten any money by any acts, wayes, or means whatſoever.

Stat. 1 *El.* 1. *&* 6. *Stat.* 13 *El.* 1. Treaſon to advance the Popes authority, *&c.* *Stat.*

Stat. 33 *H.* 8. 20. Attainder of high treaſon by the courſe of the common Law, or Statutes of this Realm, ſhall be of as great force, as an attainder by Parliament: And the King ſhall have the real poſſeſſion of every thing forfeited without inquiſition or office: ſaving to ſtrangers, *&c.*

Stat. 29 *El.* 1. No record or attainder of treaſon ſhall be reverſed, where the party attainted is executed for the ſame offence.

Stat. 20 *H.* 10. and 5, 6 *E.* 6. 11. Any offence (made treaſon heretofore) commited out of the limits of the Realm, ſhall be inquired here by commiſſion, and like proceſs uſed, as if it had been done within the Realm: One Reſiant out of the limits of the Realm may be outlawed for high Treaſon: An eſtate Tail ſhall be forfeit for high Treaſon.

CHAP. XXII.

Rule 2. 36 E. 3. 15. All pleas which be pleaded in any of the Kings Courts, &c. or in the Courts of other Lords ſhall be pleaded, ſhewed and defended, anſwered, debated, and judged in the Engliſh tongue, and entred and enrolled in Latine.

Rule 7. 14 *E.* 3. 6. No proceſs ſhall be annulled, or diſcontinued by the Clerks miſtaking in writing one ſillable or letter too little or too much, but ſhall be ſpeedily amended without any advantage to the other.

Stat. 9 *H.* 5. 4. The Juſtices before whom ſuch pleas or records be made, or ſhall be depending, may make ſuch amendment as well after judgment, as before ſo long as ſuch record or proceſs ſhall continue before them.

Stat. 4 *H.* 6. 3. The Statute of 9 *H.* 5. 4. is made perpetual: provided it ſhall not extend to records or proceſſes

ceſſes in *Wales*, or whereby any perſon is outlawed.

Stat. 8 *H.* 6. 12. No judgment or record ſhall be reverſed or annulled for error aſſigned by reaſon of the raiſing or interlining of any record, proceſs, warrant, writ, pannel, or return, or any condition, ſubtraction, or diminution of words, letters, titles, or parcel of letters found in the ſame.

The Judges may reform all defects in any record, proceſs, word, plea, warrant, writ, pannel, or return; (except appeals, indictments of treaſon, or felony, and the outlawries of the ſame; and the ſubſtance of the proper names, ſirnames, and addition, left out in original writs, exigents, and in other writs of Proclamation, contrary to the Statute of 1 *H.* 5. 5.) ſo as by ſuch miſpriſion of the Clerk no Judgment ſhall be reverſed or annulled. Variance alledged between a Record, and the Certificat thereof ſhall be amended by the Judges.

Stat. 8 *H.* 6. 15. The Juſtices may amend the miſpriſions and defaults of Clerks of the Court, or of Sheriffs and their Clerks, and of all other Officers whatſoever, found before them in any record or proceſs, or the return of the ſame, by reaſon of writing one letter or ſillable too much or too little, except in records and proceſſes within *Wales*, and of felonies and treaſons, and the dependancies of the ſame.

Stat. 27 *El.* 5. After demurrer joyned and entred, the ſame Court amended all imperfections, defects, and wants of form, other than thoſe onely, which the party demurring ſhall particularly expreſs in his demurrer. Howbeit, this Act ſhall not extend to the proceedings in an appeal of felony or murder, or upon an Indictment, Preſentment, or penal Statute.

Rule 8. *Weſtm.* 2. 39. 13 *E.* 1. Damages given againſt the Sheriff, if he return not at all, or return a *tarde* upon writs delivered, or offered to be delivered him by bill;

bill: ſo upon returning a *Mandavi Baliво libertatis* falſly: Upon any reſiſtance of any great man to execute the Kings precepts, the Sheriff ſhall take the *Poſſe comitatus*, and ſee it ſerved: *See* 2 *E.* 3. 5.

The Stat. of York 5. 12 *E.* 2. Bailiffs of Franchiſes muſt deliver their returns of writs to the Sheriff, by Indenture, and if he change the return, the Lord of the Liberty, and the party ſhall recover double damages: Sheriffs and Bailiffs ſhall ſet their proper names to all returns.

Stat. 27 *El.* 12. Every Under-Sheriff, Bailiff of Franchiſe, Deputy, Clerk of the Sheriff, &c. muſt take the oath of Supremacy, and another oath for the true ſpeedy and indifferent returning of writs, and impanelling of Jurors, without taking above the fees allowed.

Stat. 29 *El.* 4 No Sheriffs, Under Sheriff, Bailiff of a liberty, or any of their Deputies, ſhall either directly or indirectly take more for ſerving an extent or execution, then after the rate of 12 *d.* for every pound under 100 *l.* and 6 *d.* for every pound above 100 *l.* of what they ſhall ſo levy, in pain to forfeit treble damages to the party grieved, and beſides 40 *l.* to be divided betwixt the Queen and the proſecutor.

☞ **Rule** 11 *Stat.* 1 *E* 34. *Stat.* 1. Averment given in a writ of falſe judgment againſt the record certified.

Rule 26 Trinity Term ſhall begin the monday after Trinity-Sunday for keeping of *Eſſoins*, proffers, returns, *&c.* the full term ſhall begin the Friday after *Corpus Chriſti* day, and have four returns onely, *Craſtino Trin. Octabis Trin. Quindena Trin.* and *Tres Trin.* the reſt are cut off: alſo by a late Act the two firſt Returns of *Michaelmas* Term are abridged.

Rule 37. 18 H. 6. 1. The Kings Letters Patents muſt bear date the day of the delivery of the warrant to the Chancellor,, and not before, otherwiſe they are void.

Stat.

Stat. 3. 4. *E.* 6. 4. Every one that hath any Intereſt in any land or office, by or under authority of the Kings Letters Patents (made after the fourth of *February* 27 *H.* 8.) may make his title, plea, avowry, *&c.* as well againſt the King, as any other by an exemplification (or *Conſtat*) under the great Seal.

Stat. 13 *El.* 6. So likewiſe of the Patentees of *H.* 2. *E.* 6. *Qu. M. P. & M.* and *Qu. Eliz.* and all claiming under them.

Rule 49. *Stat.* 14 *E.* 3. 8. Eſcheaters ſhall not continue in their office above a year.

Rule 51. *Mag. Cart.* 35. The Sheriff ſhall make his turn throughout the Hundred but twice a year, *viz.* once after *Eaſter*, and once after *Michaelmas*: And the view of Frank pledg ſhall alſo be made at the turn of *Michaelmas*.

Stat. 31 *E.* 3. *Stat.* 1. 15. Every Sheriff ſhall hold his turn yearly, one time within the month after *Eaſter*, and another time within the month after *Michaelmas*, in pain to loſe his turn for the time.

Stat. 1 *E.* 3. *Stat.* 1. 17. Indictments in Sheriffs turns muſt be by rolls indented, one part thereof to remain with the Indictors, the other with the Sheriff.

Stat. 1 *E.* 4. 2. Upon Indictments and preſentments taken before Sheriffs, or their Miniſters, at their turns or law-dayes, they ſhall not attach, arreſt, or impriſon, nor levy any fine or amerciament of any perſon ſo indicted (or pretented) but deliver the ſame Indictments or preſentments to the Juſtice of Peace of the ſame County, at their next Seſſions, who ſhall proceed hereupon, as if they were taken b fore them.

Stat. 1 *R.* 3. 4. None ſhall be returned upon a pannel of inquiry for the Sheriffs Turn, but men of good name and fame, having within the ſame County Freehold land, to the yearly value of 20*s.* or Coppihold land

to

to the yearly value of 26 s. 8 d. and every Indictment otherwiſe taken ſhall be void.

Rule 55. *Weſtm.* 1. 10. 3 *E.* 1. Coroners ſhall be choſen in all Counties of the moſt wiſe and diſcreet Knights: Sheriffs ſhall have Counterparts with the Coroners of all things which concern their office: they ſhall take nothing of any man to do their office, in pain of great forfeiture to the King.

Stat. 14 *E.* 3. *Stat.* 1 8. A Coroner ſhall have ſufficient in the County, whereof to anſwer all people.

Stat. 28 *E.* 3. 6. Coroners ſhall be choſen in the full Counties of the moſt convenient and lawfull men, ſaving unto the King and other Lords (that may make Coroners) their Franchiſes.

Stat. 1 *H.* 8 7. Where one is ſlain by miſadventure, the Coroner ſhall execute his office without fee, in pain of 40 s. Juſtices of Aſſize and Peace have power to enquire of and puniſh the defaults and extortions of Coroners.

Rule 57. *Artic. ſuper Cart.* 3. 28 *E.* 1. They ſhall not hold plea of any Contracts or Covenants, but ſuch as one of the Kings houſe maketh with another of the ſame houſe: Nor of any treſpaſs, unleſs the party were attached, and the plea determined before the Kings departure from the place where the treſpaſs was committed; Any thing attempted here againſt is void: Pleas of felony (that cannot be determined before the Steward, becauſe the felons cannot be attached, or for other like cauſe) ſhall be referred to the Common Law.

Stat. 5 *E.* 3. 2. & 10 *E.* 3. *Stat.* 2. 2. Inqueſts ſhall be taken by the men of the County about, and by none of the Kings houſe, except it be in Covenants, Contracts and Treſpaſſes, when either party is of the Kings houſe.

Stat. 13 *R.* 2. *Stat.* 1 3. The juriſdiction of the Steward and

and Marſhal of the Kings houſe, ſhall extend no further then twelve miles off the Kings Lodging.

Stat. 15 *H.* 6. 1. The defendants may aver, that themſelves and the Plaintiff (at the time of the ſuit commenced) were not of the Kings houſe againſt the Record.

Stat. 33 *H.* 8. 12. The Lord Steward of the Kings houſe alone, or (in his abſence) the Treaſurer and Comptroller of the Kings houſe with the Steward of the Marſhalſie, or two of them (whereof the Steward of the Marſhalſie to be one) may without Commiſſion hear and determine all Treaſons, Murders, Man ſlaughters, and blood-ſhed within the Kings houſe, although the King be removed before: the enquiring and verdict muſt be by the Kings houſhold ſervants in the Check-roll: No Clergy or Sanctuary is given to any, found guilty before them.

Rule 60. 17 *E.* 4. 2. *made perpetual* 1 *R.* 2. 6. No Plea ſhall be holden in Court of Pipowders, unleſs the Plaintiff or his Attorney ſwear, that the matter of the declaration was done in the time of the ſame fair, and within the juriſdiction thereof, but that oath ſhall be no concluſion to the defendant, but that he may plead as he might before: Every Steward holding plea otherwiſe, forfeiteth 5 *l.*

CHAP. XXIII.

Rule 2. *Glocester* 8. 6 *E.* 1. Attorneys may be made in all pleas, where appeals lie not.

Merton 10. 20 *H.* 3. In ſuits at the County Court, Hundred, Wapentake, or Lords Court.

Weſtm. 2. 10. 13 *E.* 1. An Attorney may be made in all Counties where Juſtices do journey; and *Stat.* 3 *H.* 7. 1. An appeal of death may be purſued by Attorney.

Weſtm.

Weſtm. 1. 25. 3 *E.* 1. *Weſt.* 2. 49. 13 *E.* 1. and *Artic. ſuper. Cart.* 11. 28 *E.* 1. There ſhall be no maintenance in ſuits.

Stat. 32 *H* 8. 9. None ſhall buy, ſell, or get or take promiſe, or grant to have any pretenced right or titles to lands, except the ſeller, or thoſe by whom he claimeth were in poſſeſſion, or took the profits by the ſpace of a year next before, upon pain that the ſeller, *&c.* ſhall forfeit the value of the land, and likewiſe the buyer, knowing the ſame; provided he that is in lawfull poſſeſſion by taking the yearly profits, may buy, *&c.* anothers pretenced right, *&c.*

Rule 7. *Stat.* 6 *R.* 2. 2. Debt, accompt, and all ſuch actions ſhall be brought in the County where the contract, *&c.* was made.

Rule 16. *Stat.* 1 *E.* 6. 7. The acceptance of a new name of dignity ſhall not abate the writ.

CHAP. XXIV.

Rule 6. *Merton* 8 20 *H.* 3. Seiſin of ones Anceſtor in a writ of right ſhall be from the time of *H.* 2.

In a Mordanceſtor, writ of Nief, and of entry, from the laſt return of King *John* out of *Ireland.*

In an Aſſize of *novel diſſeiſin*, from *Henry* 3. his firſt paſſage into *Gaſcoigne.*

Weſt. 1. 38 3 *E.* 1. Seiſin of ones Anceſtor in a writ of right ſhall be from the time of *Richard* the firſt.

In an Aſſize of *novel diſſeiſin*, and *Nuper obiit*, from *H* 3. his firſt paſſage into *Gaſcoigne.*

In a Mordanceſter, Coſinage, Aywel, entry and writ of Nief, from *H.* 3. his Coronation.

Stat. 32 *H.* 8. 2. Seiſin in a writ of right, ſhall be within 60. years.

In a Mordanceſtor, or any other poſſeſſory action (upon the poſſeſſion of his anceſtor or predeceſſor) ſhall be within 50. years.

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A writ of the poſſeſſion of the Plaintiff himſelf ſhall be within 30 years.

An avowry or cognizance for rent, ſuit, or ſervices of the ſeiſin of his Anceſtor, or of his own, ſhall be within 40 years.

Formedons in reverter or remainer, and *Scire facias* upon fines, ſhall be ſued within 50 years after the title or cauſe of action accrued.

Stat. 1 *M.* 1. *Parl.* 2. *ſiff.* 5. The Statute of 32 *H.* 8. 2. ſhall not extend to a writ of right of advowſon, *Quare impedit*, Aſſize of *Darrein* preſentment, *Jure patronatus*, writ of right of ward, writ of ravithment of ward, nor to the ſeiſer of the wards body or eſtate: but the time of the ſeiſin to be alleadged in ſuch caſes ſhall be as it was in the Common Law, before the making of the ſaid Statute.

Stat. 21 *Jac.* 2. The time of preſcription for lands concealed from the King, is ſixty years before the making of that Statute.

Stat. 1 *Jac.* 16. In writs of formedon in deſcender, remainder and reverter, and right of entry, the time is 20 years after accruer, and imperfections removed.

Rule 6. *Stat.* 25 *E.* 3. *Stat.* 5. 16. Non-tenure ſhall not abate the writ, but onely for the quantity.

Stat. 37 *E.* 3. 17. No writ ſhall be abated by acknowledgment of villeinage, if the demandant or plaintiff will aver, that he that alledgeth the exception was freed the day of the Writ purchaſed.

CHAP. XXVI.

Rule 4. *Weſtm.* 2. 2. 13 *E.* 1. A *Cui in vita* given to the wife after her husbands death, upon his loſing of the land by default, and the Tenant that recovered againſt the husband muſt maintain his own right.

CHAP. XXVII.

Rule 4. *Weſtm.* 2. 20. In a Writ of Coniſance, Ayel, and Beſayel, the point ſhall be inquired, whether the demandant be next heir, as well as in a Mortdanceſtor.

Rule 10. *weſtm.* 2. 1. 13 *E.* 1. A formedon in *Deſcender* is alſo given by this Statute to the heir in tail, upon a deſcent from his Anceſtor dying ſeiz.d of the eſtate tail.

Rule 12. *Merton* 1. 20 *H.* 3. A woman deforced of her dower or *Quarentine*, ſhall (in a writ of Dower) recover damages, *viz.* the value of her Dower from her husbands death, to the day of the recovery of her Dower, and the deforceor ſhall be amercied.

Weſtm. 1. 48. 3 *E.* 1. A writ of Dower *undenihil habet* ſhall not abate, though ſhe have received part of her Dower before the writ purchaſed, unleſs it were of the ſame party, againſt whom the writ was brought, and in the ſame Town.

Weſtm. 2. 4. 13 *E.* 1. In place of a writ of right a *Quod ei deforceat* is given to tenant in Dower for life, by the courteſie, in Frank-marriage, and in tail, upon loſing by default.

CHAP. XXVIII.

Rule 2. *Marlbr.* 7. 52 *H.* 3. In a writ *de communi Cuſtodia*, if the deforceor come not at the grand diſtreſs, the writ ſhall be renewed as often as may be within half a year, and every time read and claimed in the County-court; and if he come not in to anſwer, nor the Sheriff find him within that half

half year, he ſhall loſe the Ward ſaving his action another time, if he have right.

Weſtm. 2. 35. 13 *E.* 1. In a writ of ward of land or heir, or both, either of the parties dying before the plea determined, a re-ſummons ſhall be; And in the grand diſtreſs day muſt be given, that three County dayes may be held before the return, in every of which Proclamation ſhall be made; whereupon if the defendant appear not, judgment ſhall be given for the Plaintiff: ſaving the right of the defendant, if afterwards he will claim it: So ſhall it be done alſo in a writ of ejectment of ward.

Rule 6. *weſtm.* 2. 2. 13 *E.* 1. If the tenant diſclaim in the County-court, or other Court not of Record, the Lord may remove the plea before the Juſtices to cauſe it to be of Record, ſo as he may have a writ of right *ſur diſclaimer.*

Gloceſter 4. 6 *E.* 1. *& Explanat.* 4. When land is given in Fee-farm, rendring or doing ſo much as amounteth to the fouth part of the value of the land, if he (whoſe land is charged) let it lie freſh by two years, ſo as no diſtreſs may be found in it, nor render or do that which is contained in the writing, the other ſhall recover the land by a *Ceſſavit*; but the tenant coming before judgment, if he render the arrerages and damages, and find ſufficient to do from thenceforth that which is contained in the writing, ſhall retain his land.

Weſt. 2. 21. 13 *E.* 1. If a man detain from his Lord his ſervice due by two years, the Lord ſhall recover the land by a *Ceſſavit*: This lyeth alſo for the Lords Heir, againſt the Tenant, his Heirs and Alience.

Weſtm. 2. 41. If religious houſes, that have land given, *&c.* withdraw the Almes, *&c.* by two years, the donor ſhall have the like action.

CHAP. XXIX.

Rule 7. *Albr.* 9. 52 *H.* 3. The proceſs in a *Secta ad molendinum* is attachment, *venire facias*, and the grand diſtreſs: *See alſo there the order of proceeding in that action.*

Rule 9. *Stat.* 25 *E.* 3. *Stat.* 3. 3. The Kings Collation to a benefice (being found before Judgment to be untrue) ſhall be repealed.

Marlbr. 12. 52 *H.* The proceſs in a *Quare impedit* ſhall be Summons, Attachment, and Grand diſtreſs.

Weſtm. 5. 13 *E.* 1. A Coparcenor being diſturbed (after Partition) ſhall have a *Scire facias*, and ſhall not be put to a *Quare impedit.*

If a Tenant in Dower, or by the courteſie have preſented, the reverſioner being diſturbed ſhall have a *Quare impedit*, or *Darrein* preſentment at his pleaſure.

Rule 15. *Weſtm.* 2 9. The *Meſne* not coming in to acquit the tenant, loſeth the ſervice, and the tenant ſhall have like remedy againſt the Lord for exaction, as the *Meſne* might have had: And there ſee the proceſs and proceeding to be uſed againſt the *Meſne.*

Rule 21. *Stat. de finibus*, 18 *E.* 1. *Stat.* 4. After the writ original is delivered in the preſence of the parties before the Juſtices, the pleader ſhall ſay, Sir Juſtice *Cong' accorder*, then the Juſtice ſhall ſay, what ſaith Sir *R.*; And when the Kings fine is agreed for, and the peace cried, the Pleader ſhall declare the ſubſtance of the fine: The parties ought to be of full age, of *ſane memory*, and out of priſon: A *feme-covert* muſt be examined before four Juſtices, and without her conſent the fine cannot be levied.

Stat. de finibus levatis, It ſhall be no good exception that before and at the time of the fine levied the demandant

mandant or his anceſtors were ſeized of the land contained in the fine, or of ſome part thereof: Fines ſhall be openly read at two certain dayes in the week by the diſcretion of the Juſtices, and in the mean time all pleas ſhall ceaſe.

Stat. 5 *H.* 4. 13. Every writ of Covenant, All other whereupon Fines are levied, the *dedimus poteſtatem*, and all knowledges of the ſame, before they be drawn out of the Common Bench by the *Chirographer*, ſhall be enrolled in a Roll to be of Record for ever, out of which execution ſhall be had, if the Notes and Fines be imbeziled.

Stat. 23 *El.* 3. Every Writ of Covenant, or other writ, whereupon any Fine is levied, the Return thereof, the Concord, Note, and Foot of the Fine, the Proclamations, and the Queens ſilver, alſo every writ of Entry in the *poſt*, and other writ, whereupon any common recovery is ſuffered, writs of Summons *ad Warrantizandum*, and the return of all theſe writs, and every warrant of Attorney, may at any mans requeſt be enrolled, which enrolment ſhall be of as great force to all purpoſes in law, as the things themſelves, if they were extant: No Fine, Proclamation, or common recovery ſhall be reverſed by writ of Error, by reaſon of falſe Latine, Razure, Interlining, miſ-entring of the warrant of Attorney, or of any Proclamation, or by reaſon of any other defect of form in words, and not in matter of ſubſtance.

Rule 22. *Stat.* 34 *E.* 3. 16. The plea of non claim of Fines ſhall be no bar hereafter.

Stat. 4 *H.* 7. 24. Every Fine after the engroſſing ſhall be claimed in the Court the ſame Term, and the three next, four ſeveral dayes in every Term, all pleas ceaſing the whileſt: The Proclamations being ſo made, the Fine ſhall conclude all privies and ſtrangers, except

woman *Covert*, perſons within 21 years of age, in priſon, out of the Realm, or of *non-ſane* memory (being no parties to the Fine) ſo as they or their heirs take their action or lawfull entry within five years after thoſe imperfections removed: ſaving to all perſons and their heirs (other then parties) the right, claim and intereſt which they have at the time of the fine, ſo as they purſue it by action or lawfull entry within five years next after the Proclamations; And ſaving to all other perſons, ſuch right, title, claim and intereſt, as firſt ſhall grow, remain, or come to them after the Proclamations by force of any matter before the fine, ſo as they take their right according to the Law within five years next after it ſo grows, *&c.* And thoſe that be *Covert baron*, *&c.* at the time when it groweth, that they or their heirs take their action of lawfull entry within five years after thoſe imperfections removed: ſaving alſo to all (not parties or privies) the exception, that none of the parties, or any to their uſe, had any thing in the lands at the time of the fine.

Stat. 1 *M. Parl.* 1. 7. All fines whereupon Proclamations be not, or ſhall not be duely made, (by reaſon of the adjournment of any term by writ) ſhall be as good as if any term had been holden from the beginning to the end, and Proclamations therein made according to the Statute.

Stat. 32 *El.* 2. Proclamations of Fines ſhall be onely four times, *viz.* once in the term wherein the Fine is ingroſſed, and once in every of the three terms next after.

CHAP. XXX.

Rule 2. MAg. Cart. 12. 9 H. 3. Aſſizes of Mortdanceſter and *novel-diſſeiſin* ſhall not be taken but in their proper County by the Juſtices of Aſſize,

Aſſize, and if they cannot be determined there, they ſhall be determined by the ſame Juſtices in their Journy: Alſo difficult matters ſhall be referred to the Juſtices of the bench to be there determined.

Weſtm. 1. 24. 3. E. 1. An Aſſize given againſt an Eſcheator, Sheriff, or other Bailiff of the King, that ſeiſeth any lands by colour of his office, without ſpecial warrant; and double damages to be recovered by the party grieved.

Weſtm. 2 25. 13 E. 1. An Aſſize of *novel diſſeiſin* ſhall lie for eſtovers of wood, profit to be taken in woods, a Corody, delivery of Corn, and other victuals and neceſſaries to be received yearly in a certain place, toll, tronage, paſſage, pontage, pawnage, and the like to be taken in places certain, the keeping of Parks, Woods, Foreſts, Chaſes, Warrens, Gates, and other Bayliwicks, and Offices in fee; And in all theſe caſes the writ ſhall be, *de libero tenemento*: Alſo an Aſſize is given for common of turbary, fiſhing and ſuch like Commons appendant to a free-hold, or without a freehold by ſpecial deed (at leaſt) for term of life.

If any holding for years, or in ward alien in fee, remedy ſhall be had of an Aſſize, and both the feoffors and feoffees ſhall be had for diſſeiſors, ſo that during the life of any of them, the ſaid writ ſhall hold place; but if they die, the remedy ſhall be by writ of entry.

The giving of this writ in new caſes ſhall not diminiſh the force thereof in thoſe wherein it had force before; and remedy alſo ſhall be had thereby, in caſe where one feedeth in the ſeveral of another.

In this ſuit, if the defendant fail to make good the exception, which he pleads, he ſhall be adjudged a diſſeiſor without taking the Aſſize, and ſhall give to the Plaintiff double damages both inquired, and to be inquired; and beſides ſhall ſuffer a years Impriſonment.

If ſuch an exception ſhall be alledged by a Bailiff, the taking of the Aſſize ſhall not be thereby delayed, nor yet the judgment upon the reſtitution of the land and damages: Howbeit, if the Maſter of ſuch Bailiff afterwards offer to prove to the Court by matter of Record, that there was juſt exception, whereby the Plaintiff might have been barred, he ſhall have a *venire facias*, to produce ſuch record: And then, if the Juſtices ſee cauſe, the plaintiff ſhall be warned to appear at a certain day, and the defendant ſhall then have again his ſeiſin and damages, and the Plaintiff ſhall be puniſhed by Impriſonment at the diſcretion of the Juſtices: In like manner alſo ſhall the Juſtices proceed, in caſe the defendants proof is by deeds and releaſes; for if the plaintiff purchaſed the Aſſize contrary to his own deed, he ſhall be puniſht as aforeſaid.

Stat. 7 *R.* 1. 10 An Aſſize of *novel diſſeiſin* for rents iſſuing out of lands in divers Counties ſhall be taken *in conſimilo comitatus*, as is uſed for Common of Paſture in the County, appendant to tenements in another.

Stat. 1 *H.* 4. 8. A ſpecial Aſſize is maintainable by the diſſeiſee for ſuch lands, as are granted by the Kings patent, without title firſt found by inqueſt for the King, without ſuit to be made to the King in that behalf; And if the patentee pray in *Aide* of the King, a *procedendo* ſhall alſo be granted without ſuit. Here if the Aſſize paſs for the diſſeiſee, he ſhall recover treble damages againſt the patentee.

Stat. H. 4. 8. If any make forcible entry into lands by way of maintenance, the Chancellor of *England* ſhall grant a ſpecial Aſſize without ſuing to the King; and if the diſſeiſor ſhall be attainted thereof, he ſhall ſuffer one whole years impriſonment, and reſtore double damages to the party grieved.

Stat. 21. *H.* 8. 3. The plaintiff in Aſſize may abridg his

his plaint of any part, whereunto a bar is pleaded without prejudice to the residue.

Merton 3. 20 *H.* 3. A man disseised recovering his seisin by Assize of *novel disseisin*, or confession of the party, and having the same delivered him by the Sheriff, if he be again disseised of the same tenements by the same disseisor, he shall have a writ of redisseisin to command the Sheriff (taking with him the Keeper of the pleas of the Crown, and other Knights) in proper person to go to the land, *&c.* and by the first Jurors or other lawfull men to make enquiry: Howbeit, this must not be without special commandment of the King: The *redisseisor* shall be imprisoned.

Marlbr. 8. 52 *H.* 3. And not delivered without special command of the King, and payment of a Fine.

Westm. 2. 8 13 *E.* 1. Writs of *disseisin* must be enrolled in the Chancery, and transcripts thereof shall be sent into the *Exchequer*.

Westm. 2. 26. A writ of *redisseisin* shall lie for them that have recovered by default, reddition, or otherwise, without recognition of Assizes or Juries: The *redisseisor* shall answer double damages, and not be repravisable by common writ.

Rule 8. *Westm.* 2. 24. 13 *E.* 1. Giveth an Assize of nusance against him, to whom the tenement is alienated after the nusance is made.

Stat. 6 *R.* 2. 3. The Plaintiff if he will, may have a writ of nusance in the nature of an Assise, determinable before the Justices, or before the Justices of Assize.

Rule 9. *Magn. Cart.* 12. *Vide supra*, *Rule* 2.

Marlb. 16. 52 *H.* 3. If the Lord will not render unto the heir the land (when he comes to age) without plea, the heir shall recover his land by an Assize of Mortdancestor, together with all his damages.

West. 2. 4. 13 *E.* 1. If a woman having no right, recover

ver Dower againſt a Guardian, the heir at full age ſhall have a Mortdanceſter againſt her.

Gloceſter 3. The heir ſhall have an Aſſize of Mortdanceſter, if the ranant by couttefie alien, and leave no Aſſets.

Gloceſter 6. All the heirs, whereof one is Son, or Daughter, Brother, or Siſter, Nephew or Niece, and the other in a further degree, ſhall joyne in a Mortdanceſter.

Rule 10. *Mag. Cart.* 13. An Aſsize of *Darren* preſentment ſhall be alwayes taken before the Iuſtices of the Common place.

Rule 11. *weſtm.* 2. 24. 13 E. 1. A writ of *Juris utrum* ſhall be granted, to try whether free almes belong to one Church or another, in caſe where they are tranſferred from one Church to another.

Rule 13. *Stat.* 31 H. 8. 1. Jointenants and tenants in Common of an eſtate of Inheritance in their own right or in the right of their wifes in any Mannors, Lands, &c. may be compelled to make partition by writ *de partitione facienda*, as Coparceners are compellable to do, and afterwards ſhall have aid to deraigne the Warranty paramount, and to recover *pro rata*, as Coparceners (after partition) ſhould.

Stat. 32 *H.* 8. 32. Jointenants and tenants in common, that hold for life or years amongſt themſelves, or with others, that have inheritance or freehold in any Mannors, lands &c. ſhall alſo be compelled to make partition by the ſaid writ, to be purſued upon their caſe. Howbeit, ſuch partition ſhall not be prejudicial to any but the parties to ſuch partition, their executors and aſſignes.

CHAP.

CHAP. XXXI.

Rule 3. *Stat. 9 E. 3. Stat. 1. 3.* In a writ of debt brought againſt divers executors, they ſhall have but one Eſſoin before appearance, and another after appearance, he or they that do firſt appear in the Court at the grand diſtreſs, ſhall anſwer to the Plaintiff, and the Plaintif (if it paſs for him) ſhall have judgment and execution of the goods of the Teſtator againſt all named in the writ, as well as if they had all pleaded.

Rule 7. *Mag. Cart. 8. 9 H. 3.* The pledges ſhall be free ſo long as the principal debter is ſufficient; And they anſwering the debt, ſhall have the lands and rents of the principal, until they be ſatisfied: but *note, that this is meant of the Kings debter.*

Stat. 1 R. 2. 12. No warden of the Fleet ſhall ſuffer any priſoner in execution to go out of priſon by Mainprize, Bail, or *Baſton*, without making agreement with the party, unleſs by writ, or other commandment of the King, upon pain to loſe his Office, and the Creditor to have a writ of debt againſt him.

Stat. 23 H. 6. 10. Every Obligation taken by a Sheriff, or his Miniſters by colour of their office of any perſon in their Ward by courſe of Law, ſhall be by the name of their office, and upon condition that the priſoner appeared at the day and place mentioned in his Writ, Bill, or Warrant, an Obligation in any other form taken is void.

Stat. 32 H. 8. 37. The Executors and Adminiſtrators of him, that hath any rent or fee-farm in fee-ſimple, fee-tail, or for life, ſhall have an Action of debt for the arrerages in the Teſtators life time, againſt the tenants that ſhould then have paid it, or may diſtrein and

and make avowry upon their matter) in the lands, ſo long as they remain in the poſſeſſion of the ſaid tenant, or of any claiming onely for him.

A husband ſeiſed of any ſuch eſtate in any rent or fee-farm in his wives right, ſhall (after her death) himſelf (and alſo his executors or adminiſtrators) have the ſame remedy for arrerages due in her life: So likewiſe of him, (his executors, or adminiſtrators) that hath a rent or fee-farm during anothers life, and *Ceſty qui vie* die, the ſame being unpaid.

Rule 9 *Stat.* 13 *El.* 4. The lands, profits, and hereditaments of every Accomptant, or him that receiveth money for the Queen, or her ſucceſſors, to be imployed to the uſe of the Queen, *&c.* ſhall be extended (in the nature of a Statute ſtaple) for the payment of the arrerages: Or the Queen, *&c.* if he do not ſatisfie within ſix months after the arrerages found, may ſell his land; and the party may have the ſurpluſage to be delivered to him, by him that received the money upon the ſale, without further warrant: This ſale to be of any land, whereof it is found by Inquiſition, that the Accomptant taketh the profits; with Inquiſition, if it be not true, after traverſe of the office, and that found for him, he ſhall have his land again without any petition, livery, or *Ouſter le main*: Here, if any ſuch buy land with the Queens treaſure, and pay not the arrerages, as before; the Queen ſhall ſeize and retain the land according to the rate that the party had it.

This Act extendeth not to ſuch Officers as have uſed to diſburſe money immediately after their accounts paſt, as the treaſurers of War, Garriſons, Navies, *&c.* unleſs the Queen, *&c.* command preſent pay: Neither doth it extend to Accomptants whoſe whole Receit exceedeth not 300 *l.* or Bailiffs of Liberty

The

The Queen, *&c.* being ſatisfied by ſale of land, the ſureties ſhall be diſcharged for ſo much, and if any remain yet unpaid, the ſureties ſhall pay the reſidue ratably according to their abilities.

Stat. 2. 7 *El.* 3. The Queen, *&c.* may make ſale of the accomptants lands, *&c.* as well after his death, as in his life time, and as well where the accompt was made, and the debt known within eight years after his death, as in his life time. Provided, that after the accomptants death and before the lands be ſold, a *ſcire facias* ſhall be awarded to garniſh the heir, to ſhew cauſe why the lands, *&c.* ſhould not be ſold, *&c.* whereupon if the heir upon ſuch Garniſhment or two *nihils* returned, do not prove unto the Court that the executors or adminiſtrators of the accomptant have ſufficient, then two months after ſuch two *nihils* or garniſhment returned, the lands, *&c.* ſhall be ſold, and diſpoſed according to the *Stat.* of 13 *El.* 4. Nevertheleſs the heirs ſale *bona fide* and upon good conſideration before the *ſcire facias* awarded, ſhall be good to him, that is not conſenting to defraud the Queen, *&c.*

This Act ſhall extend to all Officers of Receipts and Accompts to the Queen, and to none other? The heirs lands, *&c.* ſhall not be ſold during his minority but at any time within eight years after his full age, they ſhall be leviable as aforeſaid: If the Accomptant or debtor had a *Quietus eſt* in his life time, that ſhall diſcharge the heir of debt.

Stat. 7. *Jac.* 15. No debt ſhall be aſſigned to the King, *&c.* by any debtor or accomptant, other then ſuch debts as did before grow due originally to the Kings debtor or Accomptant *bona fide*: All grants and Aſſignments of debts to the King *&c.* contrary to the true intent of this Act ſhall be void.

Rule 15. *Marlb.* 23. 52 *H.* 3. Attatchment given in an

an Action of Accompt againſt Bailiffs, that withdraw themſelves, and have no lands or tenements to be diſtrained by.

Weſtm. 2. 11. 13 *E.* 1. He to whom the accompt is to be made, may aſſign Auditors to take it, who may immediately commit to the next Goal the Accomptant (being found in arrerages) till he fully ſatisfie: whereupon the Accomptant finding himſelf grieved, may bring the matter by a *ſcire facias* before the Barons of the Exchequer.

CHAP. XXXII.

Rule 22. WV *Eſtm.* 1. 20. 3 *E.* 1. Treſpaſſers in Parks and Ponds attainted at the ſuit of the party (beſides making large amends according to the treſpaſs and fine at the Kings pleaſure) ſhall have three years impriſonment, and find good ſecurity not to commit the like treſpaſs; And if he cannot find ſurety, he ſhall abjure the Realm. Being a fugitive, and having no lands or tenements, whereby to be juſtified, he ſhall be proclaimed from County to County; and (if he appear not) outlawed.

Stat. 5 *R.* 2. 7. None ſhall enter into lands or tenements by force, in pain of Impriſonment, and ranſome at the Kings pleaſure.

Stat. 15 *R.* 2. 2. When forcible entry is made into lands or Church livings, one or more Juſtices of Peace taking ſufficient power, and going to the place ſo kept by force, may commit the offender to the next Gaol, there to remain convict by the Juſtices record, till he hath made fine and ranſome to the King, and herein the Sheriff and all others ſhall be aſſiſtant, in pain of Impriſonment and great fines making.

Stat. 8 *H.* 6 9. The Statute of 15 *R.* 2. 2. ſhall be duely

put

put in execution both against forcible entry and forcible detainer, though the entry was peaceable.

When complaint of any such entry or detainer shall be made to any such Justice or Justices of Peace, he or they by precept shall command the Sheriff to summon a sufficient Jury, and having by them made inquiry of the force committed, shall cause the tenements to be reseised, and that as well in the absence as presence of the party offending. And here, the alienation of tenements (so entred into or detained by force) for maintenance, shall be adjudged void: Howbeit, this Act shall endamage none, where peaceable possession hath been enjoyed three years.

Stat. 31 *El.* 11. There shall be no restitution upon an Indictment of forcible entry or detainer, where the defendant hath been three years next before in quiet possession, and his estate therein ended.

Stat. 21 *Jac.* 15. Upon force or detainer, as aforesaid, a Justice or Justices of Peace have power to give restitution of possession, as well unto tenants for years, by *Elegit*, Statute-Merchant, or Staple, Coppy-holders, or Guardians by Knight-service, as unto such as claim freehold or Inheritance.

Merton 6. 20 *H.* 3. A Lay-man ravishing or marrying a Ward within 14 years of age, shall be imprisoned, besides loss of the value of the marriage.

Westm. 2. 35. 13 *E.* 1. A strict Law against one that taketh away a Ward.

CHAP. XXXIII.

Rule 2. M *Agna. Cart.* 34. 9 *H.* 3. A woman shall have no appeal, but onely of the death of her husband.

Gloceſter 9. 6 *E.* 1. An appeal of the death of a man must

must be brought within the year.

Stat. 3 *H.* 7. 1. One acquitted upon an indictment of Murder or Man slaughter, or as accessory, shall not go at large without good bail, until the year and day be past, within which time an appeal may be brought (if no Clergy be had before) and all advantages therein saved, as if the acquittal had not been.

CHAP. XXXIV.

Rule 17. & 18. *Est.* 2. 7. A Guardian may have writ of admeasurement of dower, howbeit, the heir (at full age) shall not be barred by that suit, if the guardian did follow it faintly.

In Writs of admeasurement both of Dower and Pasture after the great distress, proclamation shall be made two County dayes, whereupon if the party come, the plea shall proceed, if not, admeasurement shall be made in his default.

Westm. 2 8. 13 *E.* 1. When the same party (after admeasurement) another time surchargeth the Common, a writ to enquire of that second surcharge shall go out either *judicial*, if the former admeasurement were before the Justices; or otherwise, *Original*, out of the Chancery, and the beasts surcharging the Common, (or their value) shall be answered to the King.

Rule 24 *&c.* *Marlbr.* 21. 5. 2 *H.* 3. The Sheriff may *replevin* beast, not onely without, but within the liberty also, if the Bailiff of the liberty will not do it.

Westm. 2 2. 13 *E.* 1. The Sheriff or Bailiff shall take pledges of the plaintiff before they make deliverance of the beasts, not onely *de prosequendo*, but for return in them, if a return be adjudged, he that taketh pledg, otherwise shall answer the price of the beasts.

Upon

Upon a return awarded to the defendant, the writ *de returno habendo* ſhall have this clauſe (that the Sheriff ſhall not deliver them without writ, wherein mention ſhall be made of the Judgment;) and thereupon he may (if he will) have a judicial writ to the Sheriff to deliver him the beaſts: but if afterwards the Plaintiff deſire to replevy his Beaſts again, he ſhall have a *Judicial* writ, (*viz.* a writ of *ſecond deliverance*) that the Sheriff taking ſurety for the ſuit, and alſo for the beaſts to be returned or their price (if return be awarded) ſhall deliver the beaſts before returned, and the diſtrainor ſhall be attached to come before the Juſtices at a certain day, and if he that replevied make default, or for ſome other cauſe, return of the diſtreſs is awarded (being now twice replevied) the diſtreſs ſhall afterwards remain irrepleviable.

Stat. 1. 2 *P. M.* 12. Every Sheriff of a Shire (being no City) ſhall at his firſt County-day, or within two months after receit of his patent, proclaim in the Shire-town four deputies (at leaſt) dwelling not paſt 12 miles one from another, which in his name ſhall make *Replevins*, as the Sheriff might do himſelf.

Rule 30. *Stat.* 2 *E.* 3. 3. Commiſſions of *Oyer* and *Terminer* ſhall be onely granted to the Juſtices of the one Bench or other, or to Juſtices *errants*.

CHAP. XXXVI.

Rule 1. *Stat. de quo warranto*, 18 *E.* 1. Pleas of *quo warranto* ſhall from henceforth be pleaded and determined in the Circuits of the Juſtices. See alſo *Stat. de quo warranto novum.*

Rule 3, &c. *Stat.* 36 *E. Stat.* 1. 13. No Eſcheator ſhall take enqueſts of office but indented between the Jurours and him, otherwiſe they are void.

Stat. 33 *H.* 8. 22. No Eſcheator ſhall ſit *virtute affi-*
ii (only) to find an office of lands holden of the King, of 5 *l.* value or above, in pain of five pounds.

Stat. 8 *H.* 6. 16. No Eſcheator ſhall take inqueſts but of people impanelled by the Sheriff, and thoſe enqueſts muſt be returned within a month after the taking, in pain of 20 *l.* ſo alſo of Commiſſioners.

Stat. 23 *H.* 6. 17. An Eſcheator ſhall take an inqueſt, *virtute brevis*, within a month after the delivery of the writ unto him, his fees are there alſo ſet down.

Stat. 1 *H.* 8 8. He ſhall not ſit, unleſs he have lands *&c.* to the clear value of 40 marks, in pain of 20 *l.* He ſhall not delay to take the Verdict when the Jury offers it in pain of 100 *l.* ſo alſo of Commiſſioners: He ſhall not be Eſcheater again within three years after that year ended.

Stat. 36 *E.* 3 *Stat.* 1. 13. A traverſe is given to the party whoſe lands are ſeized by office of alienation without licence, or the nonage of the heir in Ward; It ſhall be ſent to the Kings Bench to be tryed.

Stat. 69 *E.* 3. *Stat.* 1. 13. Upon a traverſe of *monſtrans de droit*, the Chancellor may let him (that tenders it) the lands holden to farm, finding ſurety to do no waſte.

Stat. 8 *H.* 6. 19. They ſhall not be let to farm till the inqueſts returned, or within a month after, within which time the party grieved may have the benefit of the former Statute: All Letters Patents within the month ſhall be void.

Stat. 18 *H.* 6. 6. All Letters Patents made of lands or tenements before office found and returned, ſhall be void.

Stat. 1 *H.* 8. 8. Divers good proviſions concerning Eſcheators, Commiſſioners, Jurors, and Offices, and the manner of returning offices into the *petty bag*.

Stat.

Stat. 1 *H.* 8. 10. Lands ſeiſed into the Kings hand by office, ſhall be let to farm to him, that tendred to traverſe the ſame within three moneths after ſuch office found, notwithſtanding the Statute of 8 *H.* 6. 16.

Stat. 2. 3 *E.* The eſtates and intereſts of others ſhall be ſaved, though they be not found in the office where an heir of full age is found within age, he ſhall have a writ *de ætate probanda*, and may proceed to ſue out his livery or *ouſter le main*, (as his caſe is) and receives the profits of his lands, notwithſtanding ſuch office found.

Where after the Kings tenants death more heirs then one are found, or if one be untruly found a *Lunatick*, *Ideot*, or dead, the party greived may have his traverſe, as in other caſes of untrue Inquiſitions: A Traverſe of *Monſtrans de droit* is given without petition, though the King be titled by double matter of Record.

When the Jury finds *de quo vel de quibus Ignorant*, or *per quæ ſervitia ignorant*, the firſt ſhall not make a tenure of the King, nor the laſt tenure in *Capite*; but in ſuch caſes a *Melius inquirendum* ſhall iſſue forth traverſe given to an office where a wrong tenure is found: the rents of mean Lords ſhall be paid (during the nonage of the Ward) by the officer that receives the revenue of the Wards lands.

Artic. de ſuper cart. 19. 68 *E.* 1. When the Sheriff or Eſcheator ſeize land into the Kings hand without cauſe, upon ouſting of the Kings hands, the party ſhall have the meſne iſſues.

Stat. de Eſcheatoribus. 29 *E.* 4. 3. If the Eſcheator by writ out of the Chancery ſeize land into the Kings hand, and after upon Inquiſition no title is found for the King to have the Corody, an *ouſter le main* ſhall be awarded for the party out of the Chancery: Provided, that if any thing afterwards may be found in the Chancery,

Exchequer, or K. Bench of the King, a *ſcire facias* ſhall go out againſt the party, and if the King have right, he ſhall be anſwered of all the iſſues from the time of the Eſcheators firſt ſeizing of the land.

Stat. 23 *H.* 6. 17. In a *ſcire facias* upon a traverſe againſt any Patentee, no protection ſhall be allowed.

Rule 11. *Stat.* 2. 8 *E.* 3. 4. The rents given to them, that ſue livery, when the rent day cometh, how ſoon ſoever it cometh after the livery.

Stat. 32 *H.* 8 46. The erection of the Court of Wards, And *Stat.* 33 *H.* 8. 22. the annexing thereunto the Liveries: *See the Statutes at large.*

Rule 31. Alſo for the better preſervation of the peace divers wholeſome Lawes began to be framed from the beginning of the Reign of *E.* 3. for the eſtabliſhing of Juſtices of Peace in every County, until at laſt about the 12 year of R. 2. they were fully ſetled, and had power to keep the Quarter-Seſſions: which Government Sir *Edward Cook* hath obſerved to be the beſt in the Chriſtian world for the preſervation of the Peace: And therefore ſee thoſe Statutes, as you ſhall find them ranked together in divers Books now extant.

Rule 33. Concerning Informations, there are divers good Lawes made, which are now ſorted together (under the titles of *actions popular* or *Informations*) in divers Treatiſes, which treat of the office of a Juſtice of Peace; and therefore it is conceived needleſs here to inſert them.

Rule 34 See *Officium Coronatoris*, 4 *E.* 1. Which ſetteth down the whole order how he is to proceed upon inquiries: See alſo *Stat de exonia* 14 *E.* 1, and the articles thereunto annexed.

Artic. ſuper Cart. 3. 28 *E.* 1. The Coroner of the County ſhall join with the Kings Coroner in inquiring of the death of a man in a Kings houſe.

Stat.

Stat. 33 *H.* 8. 12. The Coroner of the Kings houſe ſhall enquire alone without the Coroner of the County, by a Jury of the Yeoman Officers of the Court.

CHAP. XXXVII.

Rule 10 *Stat.* 31 *El.* 3. Upon a ſummons in a real action (fourteen dayes before the return) a Proclamation of a Summons ſhall be made (upon a Sunday after divine Service) at the door of the Pariſh Church where the Land lieth, and ſhall alſo be returned with the names of the Summoners: And till that done, no *Grand Cape* ſhall go out, but a *Alias* and *Pluries*, as the caſe requireth.

Rule 15. *Stat.* 1 *H.* 55. In every original writ of actions perſonal, appeal, and indictments, in which the *Exigent* ſhall be awarded to the names of the defendants, additions ſhall be made of their eſtate and degree or miſtery, and the Towns, Hamlets, Place, and Counties, in which they were or be converſant, otherwiſe all Outlawries thereupon pronounced ſhall be *nul.* And before theſe Outlawries be pronounced, the ſaid writs and indictments ſhall be abated by the exception of omitting the ſaid additions.

Stat. 6 *H.* 6. 1. All *Exigents* and Outlawries upon indictments in the Kings Bench of Felony and Treaſon, ſhall be void, if before the *Exigent* awarded, a *Capias* be not directed to the Sheriff of the County, whereof they be named in the Indictment, having ſix weeks ſpace (or larger, at the diſcretion of the Juſtices) before the return.

Stat. 8 *H.* 6. 10. In every indictment, or appeal of Treaſon, Felony, or Treſpaſs, after the firſt *Capias* returned, forthwith (before the *Exigent*) another *Capias* ſhall be awarded to the Sheriff of the County, where

by the indictment the party is ſuppoſed to abide returnable before the ſame Juſtices, *&c.* containing the ſpace of three months (where the Counties be holden from month to month) and of four months (where they be holden from ſix weeks to ſix weeks) by which *Capias* the Sheriff ſhall be commanded to take his body, if he be found in his Bailiwick: If he be not found, then to make proclamation (for his appearance) in two Counties before the return of the writ. Any *Exigent* or Outlawry otherwiſe pronounced ſhall be holden for none.

Stat. 10 *H.* 6. 6. The like is to be obſerved, when any indictment or appeal (taken before Juſtice of Peace, or other having power) ſhall be removed before the King in his Bench, or elſwhere by *Certiorari*, or otherwiſe.

Stat. 6 *H.* 8. 4. Upon every *Exigent*, a writ to make three Proclamations (returnable the day of the return of the *Exigent*, and the Proclamations to be made, *viz.* two in the full County Court, and the third at the general Seſſions) ſhall go out to the Sheriff of every other County (*viz.* then that, where the action is brought) where the defendant is ſaid to be, or lately to have been if the Kings writ run there; otherwiſe to the County next adjoyning to that, where he is ſaid to be: Every outlawry to the contrary ſhall be avoided by plea.

Stat. 37 *E.* 3. 2. A writ *Identitate nominis*, given to thoſe, whoſe lands, goods or chattels be ſeized by any officer ſurmiſing them to be outlawed (where they be not) becauſe they bear ſuch names as they who be outlawed for want of good declaration of the Sirname.

Stat. 9 *H.* 6. 4. A writ of *Identitate nominis* ſhall be (in this caſe) maintainable by executors, as well as by the teſtator himſelf if he were living.

Rule 18. *Stat.* 5 *E.* 3. 12. Where the Plaintiff hath recovered

recovered damages, and he againſt whom damages are recovered is outlawed at the Kings ſuit, no Charter of pardon ſhall be granted, except the plaintiff be ſatisfied for his damages. When one is outlawed by proceſs before his appearance, no ſuch Charter ſhall be granted, except he yield himſelf before the Juſtices, from whom the *Exigent* iſſued, who ſhall cauſe the party to be warned to appear before them at a day: whereupon if the plaintiff appear, they ſhall plead upon the firſt original, as if no Outlawry had been. If the plaintiff appear not, and the warning be duely witneſſed, he that is outlawed ſhall be delivered by vertue of his Charter.

Stat. 3 *El.* 3. Upon every *Exigent* in perſonal action, a writ of Proclamation ſhall go out of the ſame Court to the Sheriff of the County, where the defendant at the time of the *Exigent* ſhall be dwelling, whereupon three Proclamations ſhall be made, *viz.* one in open Court, another at the Quarter-Seſſions, and the third one month (at leaſt) before the *Quinto exact* at the door of the Pariſh Church where the defendant ſhall be dwelling at the time of the *Exigent*, upon a Sunday, immediately after Divine Service. All outlawries otherwiſe executed ſhall be void.

But before reverſing of any ſuch outlawry in this reſpect, the defendant ſhall put in bail, not onely to anſwer the Plaintiff in a new action, but to ſatisfie the condemnation, if the Plaintiff begin his ſuit within two Terms.

Rule 20. *Stat.* 25 *E.* 3. *Stat.* 5. 15. The ſecond *Capias* in caſe of Felony muſt be returned three weeks after.

Rule 24. *Weſtm.* 2. 39. 13 *E.* 3. The Plaintiff may aver that the Sheriff might have returned greater iſſues, and thereupon ſhall have a Judicial writ to the Juſtice of Aſſize to inquire of what and how great iſſue

he might have anſwered from the day of the purchaſe of the writ to the day of the return, and the Sheriff ſhall be charged with the ſurpluſage not returned.

Stat. 1 *E.* 3. *Stat.* 1. 5. The like averment of too ſmall iſſues returned, given againſt Bailiffs of Franchiſes, as well as againſt the Sheriff.

Rule 30. *Weſtm.* 1. 17. 13 *E.* 1. The Sheriff or Bailiff may take the power of the County or Baliwick, and beat down a Caſtle or Fortreſs, where ſuch beaſts are incloſed, if he that took them will not make deliverance.

Rule 33. *Weſtm.* 2. 11. 13 *E.* 1. Proceſs of Outlawry given in an action of accompt.

Stat. 25 *E.* 3. *Stat.* 5. 17. Such proceſs ſhall be made in a writ of debt and detinue of Chattels, and taking of beaſts by *Capias & exigent*, as is now uſed in a writ of accompt.

Stat. 7 *H.* 5. 1. In writs againſt forgers of falſe charters and muniments, like proceſs ſhall be made by *Capias & Exigent*, as in writs of treſpaſs.

Stat. 19 *H.* 7. 9. Like proceſs given in actions upon the caſe ſued in the Kings Bench and Common place, as in actions of treſpaſs and debt.

Stat. 23 *H.* 8. 14. Like proceſs ſhall be had in every action, brought upon the Statute of 5 *R.* 2. 7. (concerning forcible entry) as in treſpaſs, and like proceſs in every writ of annuity and Covenant as in debt.

CHAP. XXXVIII.

Rule *Stat.* 25 *H.* 8. 20. For the election, nomination, preſentation, inveſting, and conſecrating of Arch-biſhops and Biſhops.

Rule 32. *Stat.* 5 *R.* 2. 2. Prohibits going beyond ſea without licence, *but it is repealed by* 4 *Jac.* 1.

Rule

Rule 35. *Stat. Carlile* 15 *E.* 2. The *Dedimus poteſtatem* ſhall be directed to two of the Juſtices, or to one Juſtice and a Knight.

CHAP. XXXIX.

Rule 5. *Gloceſter* 5. 6 *E.* 1. An Action of waſte is maintainable againſt tenant by the courteſie in dower, for life or for years; and the party attainted thereof ſhall loſe the thing waſted, and recompence the party grieved thrice ſo much as ſuch waſte ſhall be taxed at.

Weſtm. 2. 14. 13 *E.* 1. The proceſſes in a writ of waſte, ſhall be ſummons, attachment, and diſtreſs; and if he come not, then a writ unto the Sheriff (taking with him 12 men) to go to the place waſted, and there enquire of the waſte, and upon that waſte returned judgment ſhall be.

Stat. 11 *H.* 6. 5. Where the tenants grant over his eſtate, but notwithſtanding takes the profits, and commits waſte, an action lie againſt him.

Magn. Cart. 4. 9 *H.* 3. The Guardian may not commit waſte in pain to loſe the Wardſhip: And (*cap.* 5.) muſt repair and ſuſtain the houſes of the profit of the land.

Gloceſter 5. 6 *E.* 1. If the Guardian commit waſte, and the Wardſhip loſt anſwers not the damages before the heirs age, he ſhall render damages to the heir otherwiſe.

Artic. ſuper Cart. 18. 28 *E.* 1. An Eſcheator committing waſte upon Wards lands, ſhall anſwer damages.

Stat. 36 *E.* 1. *Stat.* 1. 13. The heir ſhall have an action of waſte againſt the Eſcheator committing waſte, as well within age, as when he is at full age: *See alſo* 14 *E.* 3 13.

Weſtm. 2. 22. 13 *E.* 1. A writ of waſte is given for one Jointenant

Jointenant or tenant in common againſt another, wherein the defendant is to be at his choice, to take his part in certain (and then to have for his part the place waſted) or to agree from thenceforth to take nothing more, then his Companions do.

Gloceſter 13. 6 *E.* 1. Hanging a plea by writ, the tenant may not commit waſte, nor eſtrepment of the land in demand, and if he do, the demandant may have a writ to cauſe the land to be kept, that no waſte nor eſtrepment be done.

CHAP. XL.

Rule 2. 36 *E.* 3. 15. Declarations ſhall be good enough, if they have matter of ſubſtance, though the terms be not apt.

Rule 10. *Weſtm.* 1. 46. If a writ of *novel diſſeiſin* be purchaſed, and the diſſeiſor die before the Aſſize be paſſed, the Plaintiff ſhall have a writ of entry *ſur diſſeiſin* againſt his heir: The like ſhall the heir of the diſſeiſin have, in caſe he die, &c. The nonage of the heir of the diſſeiſor or diſſeiſee ſhall not prejudice in an aſſize: If the Inqueſt paſs againſt the heir of the diſſeiſee, he ſhall have an Attaint *gratis*.

Gloceſter 2. 6 *E.* 1. Where an Infant is held from his Inheritance, whereby he is driven to his writ, the Inqueſt ſhall paſs, notwithſtanding his non-age.

Expoſition of the Stat. of Gloceſter, 2. 6 *E.* 1. Touching an Enqueſt to be made for an Infant, that Statute ſhall run without limitation of time.

Weſtm. 2. 40. 13 *E.* 1. The ſuit of a woman or her heir (in a *Cui in vita*, or a *ſur Cui in vita*) after the death of her husband ſhall not be delayed by minority of the heir, who ought to warrant the land.

Rule 31. *Weſtm.* 2. 42. Certain caſes, wherein view ſhall not be granted.

Stat.

Stat. de visu terræ, & Essoyne de servitie Domini Regis 12 *E.* View shall be granted in a writ of Ward, in a writ of Customs and services, in a writ of Advowson of a Church (where there be more Churches then one in a Town, and all of one Saint) in a writ of Dower, and in a *nuper obiit.*

Rule 32. *West.* 2. 3. The reversioner may be received in default of tenant for life, dower, courtesie, *&c.* If Judgment be given by reddition, or default, the reversioner shall have a writ of entry after the death of the Termor; so shall the heir also, where the tenant was tenant in tail.

Stat. de defensione Juris, 20 *E.* The reversioner desiring to be received before judgment, shall find surety (as the Court shall allow) to answer the value of the issues of the tenant from the day of the receit, till judgment, if it pass for the demandant.

Stat. 13 *R.* 2. 17. The like receit shall be for the reversioner upon the faint pleading of such a tenant, and he shall plead in chief without delay: and the Judges (by discretion) shall give dayes of grace between the demandant and him, that is received, without giving the Common day in plea of land, unless it be by the demandants assent. Surety for the value shall be found (as before in 20 *El.*) as well where the receit is counter pleaded, as where it is granted.

Glocester 11. Tenant for years shall be received before judgment rendred, to say that the Action was by Covin.

Westm. 2. 3. Receipt is given to the Wife in her Husbands life time, if he lose her land by default, and the tenant that recovered against the husband, must maintain his own right.

Rule 33. *Westm.* 1. 39. What Counter pleaders are good in Mortdancestor, *nuper obiit,* Intrusion, and such like

like actions, and alſo in writs of Entry in the degrees, *&c.* See alſo *Stat. de vocat. ad warrant.* 20 *E.* 1. 1. 4 *E.* 1. 18. *& Weſt.* 2. 6.

Rule 48. After Sanctuaries were taken away for ſundry offences by divers Statutes at laſt by the Statute of 21 *Jac.* 28. They were totally annulled.

Rule 5. 3. *Gloceſter* 3. The heir ſhall not be barred of his Mothers Inheritance by the warranty of the father, being tenant by courteſie, or alienation without fine in the Mothers life time, except he leave *Aſſets.*

Rule 68. *Weſtm.* 1. 12. Notorious Felons, which will not put themſelves upon an Inqueſt at the Kings ſuit againſt them, ſhall be put to a pain *fort & dure*, as thoſe that refuſe to be tried by the Law of the Land.

Rule 70. The Statutes that concern Abjuration are, *Stat. de Artic. Cler.* 10. and 15. 21 *H.* 8. 2. *&* 21. 2. 8. 12 *&* 24. but Sanctuaries being taken away, that is now alſo out of uſe.

CHAP. XLI.

Rule 18. *Weſtm.* 2. 38. In an Aſſize there ſhall be but 14 ſummoned: And men of the age of 70 years continually languiſhing, or ſick at the time of the ſummons, ſhall not be put upon Juries.

Artic. ſuper Cart. 9 *&* 34 *E.* 3. 4. Juries ſhall be made of the next people of the County.

Stat. 11 *H.* 6. 1. None dwelling in Stews ſhall be of a Jury.

Stat. 9 *E.* 3. 5. A Deed pleaded in a Franchiſe ſhall be tried in the County where the action is brought.

Stat. 2. 3 *E.* 6. 24. Upon a ſtroke or poyſon in one County, the party dying in another, an indictment and trial may be in the County where he dieth, and alſo an appeal ſued there, and tryed by 12 men of the ſame County

Country: Likewiſe the acceſſories in one County to a murder or felony in another County, ſhall be indicted, arreigned, *&c.* in the County where the offence of acceſſory is committed.

Stat. 33 *H.* 8. 20. The indictment and trial of Lunaticks confeſſing treaſon, *&c.*

Stat. 33 *H.* 8. 13. The trial of Treaſon, *&c.* confeſſed before the Lords of the Councel ſhall be by commiſſion out of the Chancery.

Stat. 27 *H.* 8. 4. and 27 H. 8. 13. Treaſon, Felony, *&c.* committed within the Admirals juriſdiction, ſhall be heard and determined by commiſſion directed to the Admiral, and three or four others, *&c.*

Stat. 32 *H.* 8. 4. Treaſons and miſpriſions of Treaſon in *Wales*, ſhall be tried there by ſuch Commiſſioners as the King ſhall appoint.

Stat. 35 H. 8. 2. Treaſon, *&c.* committed out of *England*, ſhall be tried in the Kings Bench, or by Commiſſioners, *&c.*

Stat. 1. *&* 2 P. *&* *M.* 10. Trials for Treaſon ſhall be according to the courſe of the Common Law.

Stat. 23 *E* 33. No Indictors ſhall be put on Inqueſts upon the deliverance of Indictees of Felonies or Treſpaſs.

Weſtm. 2. 38. None ſhall be put in Aſſize or Juries triable in their own County, but ſuch as have 20 *s. per annum* freehold, nor in Aſſize, *&c.* triable out of their Country, unleſs they have 40 *s. per annum*, &c.

Stat. de ponend. in Aſſiſ. 21 *E.* 1. None ſhall be put in Aſſize out of the County, unleſs they have 5 *l. per annum*, now within their County, unleſs they have 40 *s. per annum.*

Stat. 2 *H.* 5. 3. Upon trial for the death of a man, and betwixt party and party (when the debt or damages amount to 40 Marks) he ſhall have 40 *s. per annum.*

Stat.

Stat. 33 *H.* 8. 13. In Corporations 40 *l.* in goods sufficeth.

Stat. 2 *E.* 6. 32. The 40 *s.* yearly value must be inserted in the *Venire facias.*

Stat. 27 *El.* 6. Such a Juror shall have 30 *l.* yearly value; Howbeit these two last Statutes extend not to Corporations.

Stat. 27 *El.* 7. The Jurour shall be returned by some addition, whereby he may be known.

Stat. 8 *H.* 4. 3. Every Jurour returned within the County of *Middlesex*, shall be called the fourth day of the return.

Stat. 5 *E.* 3. 10. An *Ambidexter* shall never be of a Jury more.

Stat. 34 *E.* 3. 8. The party of any stranger may sue him for it.

Stat. 38 *E.* 3. 12. And both the Jurours and the Embracerours being thereof attaint, shall pay ten times so much as they have taken.

Westm. 2. 30. When and how Assizes, *&c.* shall be taken in the Country: See also *Statutum de finibus levatis*, 4 21 *E.* 1. That Enquests thereof being taken, shall be returned into the Bench, and there judgment shall be given thereupon, *&c.*

Stat. Eberac. 3. 12 *E.* 2. Enquests in Pleas of Land that require too great examination, shall be taken in the Country before a Justice of the Place, where the plea depends, and a Knight there, or other, *&c.*

Stat. 42 *E.* 3. 11. *Nisi prius* shall not be granted before the name of the Jurours returned.

Stat. 14 *E.* 3. 16. The directing of *Nisi Prius* to be tryed in the Countrey.

Stat. 18 *El.* 12. Trial of *Nisi Prius* for *Middlesex*, in the term time, or 4 dayes after.

Rule 19. *Stat.* 15 *H.* 8. 6. made perpetual, 2 *E.* 6. 32. Six suf-

ſufficient Hundreders ſhall be returned upon every Jury.

Stat. 27 *El.* 6. If two ſufficient Hundreders appear in any perſonal Action, it ſufficeth.

Rule 20. *Stat.* 7 *R.* 2. 10. An Aſſize of *novel diſſeiſin*, of rent iſſuing of tenements in divers Counties ſhall be in the Confines of the ſaid Counties.

Rule 22. *Stat.* 28 *El.* 3. 3. confirmed by 8 *H.* 6. 28. In every ſuit between an alien and a Denizen, (though the King be a party) the one half of a Jury ſhall be Aliens, if there be ſo many in that *Viſne*; and if there be not ſo many, then ſo many as be there, not parties.

Rule 23. *Mag. Cart.* 29. A Peer of the Realm upon an Indictment of Felony or Treaſon, ſhall be tryed by his Peers.

Stat. 20 *H.* 6. 9. Dutcheſſes, Baroneſſes, Counteſſes, *&c.* ſole or married, ſhall be tried (in ſuch caſes) as Peers of the Realm.

Rule 37. *Stat.* 22 *H.* 8. 14. No perſon arraigned for petty Treaſon, Murder, or Felony, ſhall be admitted to any peremptory Challenge above the number of twenty.

Rule 38. *Stat.* 35 *H.* 8. 6. made perpetual, 2 *E.* 6. 32. A *Tales* may be made up before the Juſtices of Aſſize, or *Niſi prius*, of able perſons of the ſame County then preſent, at the prayer of the plaintiff or demandant.

Stat. 4. 5 *P. M.* 7. So likewiſe for the King upon requeſt by any authorized thereunto, or aſſigned by the Court, or by the Informer, that follows as well for the King as for himſelf.

Stat. 14 *El.* 9 Such a *Tales de circumſtantibus* ſhall be alſo granted at the prayer of the Defendant or Advowant.

Rule 53. *Stat.* 21 *H.* 8. 3. The demand of a thing intire may be abridged before Verdict, though thereby the writ become falſe.

Rule

Rule 60. *Magn. Cart.* 28. Wager of Law ſhall not be admitted without credible witneſſes.

Stat. 5 *H.* 4 8. In actions of debt upon arrerages of accompt faining (to the intent to put the defendants from their Law) that the ſame was found before their Apprentiſes or Servants. Auditors aſſigned therein, it ſhall be in the Judges diſcretion upon examination of the Attorneys (or whom elſe they pleaſe) to receive the defendants to their Law, or elſe to try the ſame by Enqueſt.

CHAP. XLII.

Rule 10, &c. *Weſtm.* 2. 12. In an appeal of the death of a man no Eſſoin ſhall lie for the Appealor.

Weſtm. 1. 41. In an Aſſize and *Juries utrum*, after the tenant hath appeared, he ſhall be no more eſſoyned; ſo it is alſo for demandants in an Aſſize, by *Weſtm.* 2. 28.

Weſtm. 1. 42. Perceners or Jointenants in a *Præcipe* againſt the n ſhall have but one Eſſoin; So likewiſe for a man and his wife by the *Stat.* of *Gloceſter*, 10.

Stat. 9 *E.* 3. *Stat.* 1. 3. In a writ of dept againſt executors, they ſhall have but one Eſſoin before, and another after appearance.

Weſtm. 2 27. No Eſſoin is allowed after day given by *prece partium.*

Marlbr. 13. After a man hath put himſelf upon an Inqueſt, he ſhall have but one Eſſoin.

Weſtm. 2. 17. After one hath put himſelf upon an Inqueſt, an Eſſoin ſhall be allowed him at the next day, but never after.

Marlbr. 19. None ſhall need to ſwear to warrant his Eſſoin.

Weſtm.

Weſtm. 1. 43. The Demandant may aver againſt an Eſſoin of being beyond Sea.

Weſtm. 2. 17. He may aver that the tenant is not ſick, nor in ſuch plight, but that he come before the Juſtices, &c.

Stat. 5 *E.* 3. 7. Eſſoin of the Kings ſervice or protection ſhall not be allowed in Writs of Attaint.

Stat. of Eſſoyns. 12 *E.* 3. 2. See many particular Caſes where Eſſoins lie not.

Rule 16. *Stat. de Anno Biſſextili,* 21 *H.* 3. The day increaſing in the Leap-year, and that going before, ſhall be accounted for one day.

Dies communes in Banco, 51 *H.* 3. Dayes given in Writs ſhall have 9 returns.

Dies communes in Banco, and 32 *H.* 8. 21. Common dayes ſhall be given; in real actions 9 returns; In Writs of Dower 5 returns.

Marlbr. 12. In Dower, *unde nihil habet,* 4 or 6 dayes ſhall be given in the year: In Aſſizes of *Darrein preſentment* or *Quare impedit,* from 15 dayes to 15 dayes, or from 3 weeks to 3 weeks, as the place ſhall be neer or far.

Stat. 5 *E.* 3. 6. *&* 7. In an Attaint 5 dayes at leaſt.

Rule 17. *Stat.* 1 *E.* 6. 7. By death of the King, no Action, Suit, Bill, or Plaint, ſhall be diſcontinued, or put without day, but ſhall proceed as if the King had lived.

Rule 39. *Stat.* 14 *E.* 3. 14. The manner of ſearch in ſuit by petition.

Rule 43. 27 *El.* 7. A Juror ſhall not be returned without a true addition of the place where he dwels, and ſome other addition, whereby he may be known.

Stat. 35 *H.* 8. 6. What iſſues ſhall be returned upon Jurors.

Stat. 2, 3 *E.* 6. 32. If the principal Jury appear not

fully

fully at the *niſi prius*, thoſe that make default, ſhall forfeit their iſſue, though the Jury be made up, *de Circumſtantibus.*

CHAP. XLIII.

Rule 20. *Stat. de conſultatione*, 24 *E.* 1. A Conſultation ſhall be awarded by the Chancellor or chief Juſtice, upon ſight of the Libel, at the Inſtance of the Plaintiff.

Stat. 50 *E.* 3. 4. Upon a conſultation the Eccleſiaſtical Judg may proceed, notwithſtanding any other prohibition, ſo the matter of the Libel be not enlarged or changed.

Rule 23. *weſtm.* 1. 15 Perſons outlawed, and ſuch as have abjured the Realm, Provers, and ſuch as be taken with the manner, Priſon breakers, Thieves, openly defamed and known, Appellees by provers (during the life of ſuch provers) houſe burners, counterfeiters of the Kings Seal and Coin, Excommunicate perſons, manifeſt offendors and Traitors are not bailable, *&c.* Other Statutes that concern Bail are, 3 *H.* 7. 3. 1, 2 *P. M.* 13. and 3 *P. M.* 10.

CHAP. XLIV.

Rule 3. *Weſtm.* 2. 5. When the Parſon of any Church is diſturbed to demand his Tithes in the next Pariſh, by an *Indicavit*, the Patron ſhall have a Writ to demand the Advowſon, See *Stat. pro Clero*, 18 *E.* 3 7, & 47.

Rule 6. Stat. 25 *E.* 3. 18. The Lord may ſeiſe the body of a Villain, notwithſtanding that a writ *de libertate Probanda*, be hanging.

Rule 10. *Stat.* 5 *E.* 3 7. No protection ſhall be allowed in writs of Attaint.

Rule

Rule 12. See *Stat.* 13 *R.* 26. The Statute of Protection, & 1 *R.* 2. 8.

Rule 14. A Creditor ſhall have an Action and Judgment againſt the Kings Debtor, notwithſtanding ſuch a Protection, but not execution, unleſs he take upon him to pay the King, and then he ſhall have judgment and execution of both debts, as well of that due to the King, as to himſelf.

Rule 16. *Weſt.* 2. 17. He may aver that he is no ſick, &c. *vide ſupra, Cap.* 42. *Ru.* 10.

CHAP. XLV.

Rule 7. *Stat.* 14 *El.* 8. Every fraudulent recovery againſt Tenant for life, whereupon the Tenant for life is vouched, ſhall be void againſt the Reverſioner, or him in remainder, unleſs it be by his own conſent appearing of Record.

Stat. 21 *H.* 8. 15. Termers for years, or ſuch as are in by Execution of Statute Staple, Statute Merchant, or *Elegit*, may falſifie recoveries for their own term only as Tenants of the Free-hold might have done at the Common Law.

Rule 13. 25 *H.* 8. 3. revived by 5, 6 *E.* 6. 10. One arraigned upon an indictment of petty Treaſon, wilfull burning of houſes, murther, robbery, or other felony, according to the meaning of the ſame Statute, if he ſtand mute of malice or froward mind, or challenge peremptorily above 20. or will not directly anſwer, ſhall loſe his Clergy, in ſuch manner as he ſhould, if upon the arraignment he had been found guilty.

Stat. pro Clero. 25 *E.* 3. 4. None convict of petty Treaſon ſhall have it.

Stat. 8 *El.* 6. Not in Rape, Raviſhment, or Burglary, nor in the carnal abuſing of a woman within ten years of age.

Stat. 25 *H.* 8. 6. *&* 5 *El.* 17. Nor in buggery.

Stat. 5 *E.* 6. 9. Not for robbing a dwelling houſe, booth, or tent, &c.

Stat. 4, 5 *P. M.* 4. Nor for acceſſories before the fact in petty treaſon, murther or robbery in an houſe, or in or neer the high way; or for the wilfull burning of a dwelling houſe, or a barn with Grain.

Stat. 25 *H.* 8. 3. *&* 5 *E.* 6. 10. He that doth a Robbery or Burglary in one County, and is taken with the goods ſo robbed or ſtoln in another County, ſhall loſe his Clergy there, as he ſhould do where the Robbery or Burglary was committed.

Stat. 4 *H.* 7. 13. *&* 1 *E.* 6. 11. It is grantable but once to one perſon, unleſs he be within orders.

Stat. 4 *H.* 7. 13. He that asketh his Clergy the ſecond time, ſhall at a certain day bring his Letters of order or a Certificate.

Stat. 4 *H.* 7. 18 He that hath his Clergy ſhall be marked in the hand, *viz.* with an *M* if he were convict of Murder, with a *T* if he were convict of other felony.

Stat. 1 *E.* 6 12. A Lord of the Parliament in all Caſes, where Clergy lieth at the Common Law, or is reſtrained by Statute, ſhall upon his prayer be adjudged as a Clerk convict, though he cannot read.

Stat. 1 *El.* 4. *&* 18 *El.* 7. After purgation he ſhall be put to anſwer to any offence (committed before his admiſſion to the Clergy) whereupon Clergy is not allowable, and whereof before he was not indicted and acquitted, convicted or attainted, and pardoned, and ſhall be demeaned in all things, as if he had never been admitted to his Clergy.

Stat. 18 *El.* 7. He that is allowed Clergy, ſhall not be delivered to the Ordinary, but after burning in the hand, ſhall be forthwith delivered by the Juſtices out of priſon; yet for further correction they may detain him

him in prison, so as it be not above a year.

Rule 24. *Westm.* 2. 12. One being acquitted upon an Appeal or Indictment of felony, may have the abettors inquired, and have a judicial writ for damages against them, if the appellant be not sufficient.

Stat. 8 *H.* 6. 10. An Action upon the case given for him, that is duely acquit by Verdict against every procurer of any judgment, or appeal of treason, felony, or trespass: and like process shall be therein, as in a writ of trespass, *vi & armis.*

Rule 37. *Westm.* 2. 18. 13 *E.* 1. Where debt is recovered or knowledged in the Kings Court, or damages awarded, it shall be from henceforth in the election of the Plaintiff to have a writ of *Fieri facias* unto the Sheriff, to levy the debt upon the lands and chattels of the debtor, or that the Sheriff shall deliver to him all the chattels of the debtor, (except oxen and beasts of his Plough) and the one half of his land until the debt be levied upon a reasonable price or extent. And if he be put out of the land, he shall recover it again by a writ of *Novel disseisin*, and after that by a writ of *redisseisin*, if need be.

Action Burnel. 11 *E.* 1. A debt acknowledged to a Merchant before the Mayor of *London*, *York*, or *Bristol*, or before a Mayor or Clerk, (appointed thereunto by the King) shall be enrolled: and if it be not paid at the day, the debtors moveables shall be prized and sold in satisfaction by the Mayor if he have any within his jurisdiction, else by writ out of the Chancery upon a Certificate of the Recognizance thither. The Apprisors are to take them at the price, if they apprize them too high, if the debtor have not moveables sufficient, he shall be imprisoned, until, *&c.* the like processes against pledges in default of sufficient moveables of the principal.

Stat. de Mercatoribus, 13 *E.* 1. A debt acknowledged to a Merchant before the Mayor of *London*, or chief Warden of the Town, which the King ſhall appoint, or other ſufficient men (when they cannot attend) and before a Clerk, which the King ſhall aſſign, ſhall be enrolled; and if it be not paid at the day, the debtor if he be a Lay-man, ſhall be impriſoned by the Mayor, until, *&c.* if he be within their power, elſe by writ out of the Chancery, upon Certificate of the Recogniſance thither: And if he agree not with the Creditor within a quarter of a year after, then all the lands which were the debtors (the day of the Recogniſance made) and alſo his goods ſhall be delivered to the Creditor upon a reaſonable extent. And of theſe lands ſo delivered, the Coniſee being ouſted, ſhall have an Aſſiize or *rediſſiſin*.

The Writ out of Chancery ſhall be returnable before the Juſtices of either Bench, and upon a *non eſt inventus* returned, or that he is a Clerk, writs to all the Sheriffs, where he hath lands or goods, ſhall go forth to deliver the ſame upon reaſonable extent, and to what Sheriff he will to take his body. The like proceſs ſhall be againſt the pledges, if the mony be not paid at the day: If the debtor or pledges die, the Creditor ſhall have execution upon the lands of the heir as at his full age. *The Stat. of the Staple*, 27 *E.* 3 *Stat.* 28. The Mayor of the *Staple* ſhall take recogniſance of debt before himſelf, and the Conſtables of the Staple, whereupon (default of payment being made) the debtors body ſhall be impriſoned, and his goods ſold in ſatisfaction of the debt (if they be within the Staple) otherwiſe upon a Certificate in the Chancery, a writ ſhall go out from thence to impriſon his body, and ſeize his lands and goods, which ſhall be returned into the Chancery, and execution thereupon in all reſpects as in the Statute-Merchant, ſav. that the debtor ſhall have no advantage of the quarter of a year.

Stat.

Stat. 5 *H.* 4. 12. A Statute being once ſhewed in the Common Place, and the proceſs afterwards diſcontinued, yet execution may afterwards be awarded without ſhowing it again.

Stat. 11 *H.* 6 10. He that is in Priſon upon a Recognizance, ſhall not be delivered out of priſon upon a *ſcire facias* againſt the party, and ſurety found to the King alone, but ſhall find ſureties ſeverally, as well to the King, as to the other Party.

Stat. 23 *H.* 8. 6. Either of the Chief Juſtices, or (in their abſence out of the term) the Mayor of the Staple of *Weſtminſter* with the Recorder of *London* may take Recogniſances, and they ſhall be executed in all reſpects as a Statute Staple.

Stat. 27 *El.* 4. Every Statute Staple or Merchant, not brought to the Clerk of Recognizances within 4 months next after the acknowledgment thereof, ſhall be void againſt all perſons, their heirs, ſucceſſors, executors, adminiſtors, and aſſigns onely, which for good conſideration, ſhall after the acknowledging thereof, purchaſe the land, or any part thereof liable thereunto, or any rent, leaſe or profit out of the ſame.

Stat. 32 *H.* 8. 5. Lands lawfully delivered in execution upon a judgment, Statute Merchant, Staple, or Recogniſance, being evicted without any fraud or default in the tenant before he have levied the whole debt, and damages, and Recoverer and Recogniſee ſhall have a *ſcire facias* out of the ſame Court, where execution was awarded, returnable there full forty dayes after the date: and thereupon a new writ of execution (of the nature of the former) ſhall iſſue forth to levy the reſt of the debt and damages, if the defendant make default, or ſhew no good matter in barr.

Mag. Cart. 8, 9 *H.* 3. The King ſhall not take the land

lands or rents of the debtor, if he have ſufficient chattels.

Mag. Cart. 18. The goods of the debtor may be attached after his death by the view of lawfull men, that nothing be medled with till the Kings debt be paid.

Stat. 33 *H.* 8 39. All obligations to the King ſhall be of the force of a Statute ſtaple.

Rule 48. *Weſtm.* 2. 45. 13 *E.* 1. For all things recorded before the Kings Juſtices, or contained in fines (as Contracts, Covenants, Obligations, Services, or Cuſtoms, acknowledged, or any other things enrolled) a writ of execution ſhall be within the year; But after the year a *Scire facias*: The like alſo of a Meſne, who by judgment or recognisance is bound to acquit.

CHAP. XLVII.

Rule 9. *Stat.* 9 *R.* 2. 3. If tenant for life, or in tail after poſſibility of iſſue extinct be impleaded, and judgment paſs againſt him, the reverſioner or remainder man at the time of the judgment, ſhall have writ of error upon an error in the record of the ſame judgment, as well in the life of ſuch a tenant, as after his death: And if at the time of reverſing the judgment, the tenant for life, *&c.* be alive, he ſhall be reſtored, *&c.* his poſſeſſion with the mean profits, and the reverſioner, *&c.* to the arrerages of the rent, if any be due: But if the tenant for life, *&c.* be dead at the time of reverſing the judgment, then the reverſioner, *&c.* ſhall be reſtored to the poſſeſſion with the iſſues after the death of the tenant for life, *&c.* and alſo to the arrerages due in his life: *See the Marqu. of Winch. caſe, Co.* 3. 4.

Stat. 31 *E.* 3. 12. Error in the Exchequer ſhall be reverſed before the Chancellor and Treaſurer, taking to them ſuch Juſtices, and other ſage perſons as they ſhall think

think fit, and afterwards the roll ſhall be ſent back into the Exchequer to make execution.

Stat. 31 *El.* 2. If either the Lord Chancellour or Lord Treaſurer, or both the Chief Juſtices come at the day of adjournment, in the Writ of error in the Exchequer, it ſhall be no diſcontinuance.

Stat. 32 *H.* 8. 30. *Made perpetual,* 2 *E.* 6. 32. After a Verdict tried by 12 men or more in any ſuit in a Court of Record, no Judgment ſhall be ſtayed or reverſed for any miſpleading, lack of colour, inſufficient pleading, miſcontinuance, diſcontinuance, miſconveying of Proceſs, misjoining of Iſſue, lack of warrant of Attorney for the party againſt whom the Iſſue is tried, or any other default or negligence of the parties, their Counſellors, or Attorneys.

Stat. 18 *El.* 4. 14. After a Verdict of 12 men or more in any ſuit in Court of Record, Judgment ſhall not be ſtayed or reverſed for default of form, or lack of form, falſe Latine, variance for the regiſter, *&c.* in any writ, original or judicial: Declaration, Bill, or Plaint, or for want of any writ original or judicial, or by reaſon of any imperfect or inſufficient return, or for want of any warrant of Attorney, or by reaſon of any manner of default in proceſs, upon or after *Aid prayer* or Voucher.

Stat. 27 *El.* 5. After Demurrer joyned or entred in any ſuit in Court of Record, the Judges ſhall proceed and give Judgment according to right, and the matter in law appearing to them, without regarding any imperfection, defect, or want of form in any Writ, Return, Plaint, Declaration, or other pleading whatſoever, except thoſe onely, which the party ſpecially and particularly ſhall ſet down and expreſs together with his Demurrer: And no Judgment to be given ſhall be reverſed by writ of error, or by any ſuch imperfection, defect, or want of form, as aforeſaid, except as is before excepted.

The

The two laſt Statutes extend not to ſuits of Felony or Murder, nor to the indictment or preſentment of them; or of treaſon, nor to the Proceſs of any of them, nor to any ſuit upon any popular or penal Statute.

Rule 16. *Stat.* 27 *E.* 3. An error in the Kings Bench in an action of debt, detinue, covenant, account, action upon the Caſe, *Ejectione firmæ*, or treſpaſs firſt commenced there (where the King is no party) may at the parties choiſe be reverſed in the Exchequer Chamber before the Juſtices of the Common place, and ſuch Barons of the Exchequer as are of the *Coife*, or ſix of them at the leaſt, other than for error concerning the juriſdiction of the Kings Bench, or want of form in a Writ, Return, Plaint, Bill, Declaration, Pleading, Proceſs, Verdict, or proceeding whatſoever: And upon the judgment affirmed or reverſed, the Record ſhall be ſent back into the Kings Bench, to proceed and award Execution thereupon, the party grieved with ſuch reverſal or affirmation, may have a writ of error in the Parliament in ſuch ſort as is now uſed upon erroneous judgments in the Kings Bench.

Stat. 31 *El.* 1. Any three of the Juſtices and Barons (if the full number come not) may receive Writs of Error, award Proceſs, prefix dayes for the continuance of Writs of Error, *&c.*

Rule 12. *Weſt.* 1. 37. 3 *E.* 1. And Attaint is given in pleas of Land, or of Freehold, and of things that touch Freehold.

Stat. 1 *E.* 3. *Stat.* 1. 6. It is given in Writs of Treſpaſs, as well upon the principal, as upon the damages.

Stat. 5 *E.* 3. 6, *&* 7. In attaints no Eſſoin or Protection ſhall be allowed: and a *niſi prius* is given in ſuch Writs, as well as in others.

Stat. 28 *E* 3. 8. An Attaint is given in treſpaſs as well upon a Bill, as upon a Writ, without having regard to the quantity of the Damages.

Stat.

Stat. 34 *E.* 3. 7. An Attaint is granted in all pleas, as well real as perſonal.

Stat. 9 *R.* 2. 3. It is given to the Reverſioner during the life of his Tenant for life upon a recovery againſt him, with reſtitution to the Tenant that left his poſſeſſion, together with the mean profits, and of the arrerages to the reverſioner; but if the tenant that ſo loſt be dead, or were of covin with the recoveree; reſtitution ſhall be made to the reverſioner of the poſſeſſion it ſelf with the mean profits arrerages, after ſuch death or recovery by covin; ſaving to the tenant his action by *ſcire facias*, if he will traverſe the Covin.

Stat. de Attinctis, 13 *E.* 2. If the petty Jury appear not at the firſt diſtreſs againſt them, or a *nihil* be returned, the grand Jury ſhall be taken by their default.

Stat. 23 *H.* 8 3. *Made perpetual by* 13 *El.* 25. In any ſuit before Juſtices of Record (not concerning life) an Attaint is given againſt the Petty Jury, and every of them, and the party himſelf; the proceſs againſt the Petty Jury and Grand Jury, ſhall be ſummons and reſummons, and diſtreſs infinite.

Open Proclamation ſhall be made in the Court where the diſtreſs is awarded, more then 15 dayes before the return of the diſtreſs; and the Grand Jury ſhall be taken in default of the Defendant, or petty Jurors, or any of them.

If any of the petty Jury appear, then the Plaintiff ſhall aſſign the falſe Oath of the firſt Verdict untruly given, whereunto the petty Jury ſhall have no anſwer if they be the ſame perſons, and the Writ, Proceſs, Return, and Aſſignment be good and lawfull, (except the plaintiff in the ſame attaint hath before been non-ſuit or diſcontinued his ſuit, or hath had a former judgment therein) but onely that they made a true oath, which iſſue ſhall be tried by 24 of the Grand Jury; and the party

ſhall

ſhall plead that they gave a good Verdict, or any other matter which ſhall be a ſufficient bar of the attaint: Notwithſtanding which plea, the grand Jury ſhall without delay enquire of the truth of the Verdict: ſuch a day ſhall be given in a Proceſs, as in a writ of Dower, and no Eſſoin or protection allowable.

By the death of the party, or one of the petty Jury the attaint ſhall not abate, nor be deferred againſt the reſt, as long as two of the petty Jury ſhall live.

Every attaint ſhall be in the Kings Bench or Common place, and the *Niſi prius* granted upon the diſtreſs by the diſcretion of the Juſtices. Every of the petty Jury may appear and anſwer by Attorney. The *Non-ſuit* or releaſe of one, when there be diverſe plaintiffs or defendants in an Attaint ſhall not prejudice.

Every one of the grand Jury muſt have 20 Marks apiece Land of freehold out of ancient *demeſne*, but if the value of the thing in ſuit be under the value of 40 *l.* then 5 Marks a year, or 100 Marks worth of goods ſufficeth: For default of ſuch ſufficient Jurors within the ſame County, a *Tales* ſhall be awarded unto the next.

Stat. 11 *E.* 6. 4 The Plaintiff ſhall recover Coſts and Damages againſt the Juror, or defendant, that pleads a feigned plea in delay.

FINIS.

A

SUMMARY

OF THE

COMMON-LAW

OF

ENGLAND.

As it ſtood in force, before it was altered by Statute or Acts of *PARLIAMENT.*

Extracted (for the moſt part) out of the French and Engliſh Copies of Sir *HENRY FINCH*, K^t. his learned Treatiſe of the *LAW.*

And digeſted into certain Tablets for the help and delight of ſuch Students as affect METHOD.

By *E. W.*

Methodus Memoriæ Dux & Fulcrum.

LONDON,

Printed *Anno Salutis*, 1662.

AN ADVERTISEMENT TO THE READER.

THE *Science of the* Common Law *of* England, *hath not onely been in former times, but even at this day, is accounted ſo Abſtruſe and Intricate, that it hath alwayes ſeemed an Impoſſibility to reduce it to method: Howbeit, our learned Authour in his Treatiſe of the Law, hath not onely cloathed it with a* Logical *method, but with ſuch an exact one, as may be parallel'd with (if not extolled above that of* Wollebius *for Theology,* Ramus *for Geometry,* Keckerman, Alſtedius, *and other modern Writers, for Logick, Ethicks, Phyſicks, Politicks, Mathematicks,* &c. *So as the Student having treaſured up in his memory the Common places of Law held forth in theſe* Tables, *together with their coherence and dependance one upon another, may be thereby furniſhed in all the general and neceſſary titles of Law,*

whereunto he may aptly refer any Caſe he meets with, eſpecially having alſo before hand, by peruſing the Treatiſe at large, acquainted himſelf with the Definitions, Diſtributions, Affections, Rules and Examples, reſpectively belonging to each ſeveral Title, whereby he may more perfectly underſtand the nature of them. Beſides, if the Text be not read with theſe Tablets, *he will meet with divers things in them which are now abrogated by Statute, and ſo not law at this day, as* Sanctuaries, *which are now annulled by* 21 Jac. 28. *divers Offences (before)* Petty Treaſon, *now by Statute made* High Treaſon, *and the like. All which is left to his induſtry and diſcretion; the Scope and deſign of this* Summary *being onely to ſhew him the Harmonical frame of the Original Common Law before it was altered by Statute, Acts of Parliament, and other Conſtitutions of State, according to the caution before in the Title Page premiſed.*

TABLE I.

Of the Common-Law of *England* observe

1. The Circumstances, *viz.*
   - The Place where it is used, *viz.* throughout the Realm of *England*, divided into Counties, Hundreds, and Towns, within which there are divers Usages differing from the Common-Law, called Customs.
   - The persons who are to use it, and they are to be considered
     - As one entire Body
       - The King.
       - His Subjects,
         - Barons.
         - Commons.
     - As particular Persons
       - Natural persons, as every man.
       - Bodies Politick
         - At the Com. Law
           - The King alone, and by himself considered.
           - The Rector of a Church, or Parson.
         - Grown of latter time,
           - Temporal, as Major and Communalty, *&c.*
           - Spiritual
             - Regular, as Abbot and Covent, *&c.*
             - Secular, as Bishop & Chapter, *&c.*
2. The parts, See *Tab.* 2.
3. The common Affection, *viz.* Action, *Tab.* 24.

The parts of the Common Law are two,

The one concerns Possessions, whereof consider

The General Affections

1. To Possessions this is general, that they may pass by
   - Grant. 9
   - Exchange. 18
   - Prescription. 19

2. Sundry men possessing the same thing by purchase are
   - Joynt Tenants, who possess by the same Title. 5. 6
   - Tenants in common, who possess by several Titles. 5. 8

3. A possession is either
   - Restrictive, upon
     - Limitation, which ceaseth upon doing or not doing of something. 22
     - Condition, which is onely defeasable upon the doing or not doing of something. 23
   - Absolute, which is neither upon limitation or condition. 24

4. *Tab.* 3.

The Species, or several kinds, *Tab.* 4.

The other, the punishment of offences, *Tab.* 12.

4. Poſſeſſions are either in
- Poſſeſſion, *viz.* ſuch as one doth enjoy. 2
- Action, touching which conſider
  - 1. How it ariſeth, and that is in reſpect of a
    - Right, when wrong was done before. 4
    - Title, when no wrong was done. 5
  - 2. The Rules which concern it.
    - 1. A thing in Action cannot be granted, but to him in poſſeſſion, and that by 7
      - Releaſe, which is the paſſing of the Grantors Intereſt. 8
      - Confirmation, wch is the ratifying of the Grantees poſſeſſions. 9
    - 2. The grant of a thing in Action, and of ſuch things in poſſeſſion, as cannot paſs by livery of the hand, muſt be by Deed, *viz.* 10
      - Deed Pol, which is the onely Deed of the Grantor. 14
      - Indenture, which is the mutual Deed of both, and makes an Eſtopel to both parties. 15

TABLE

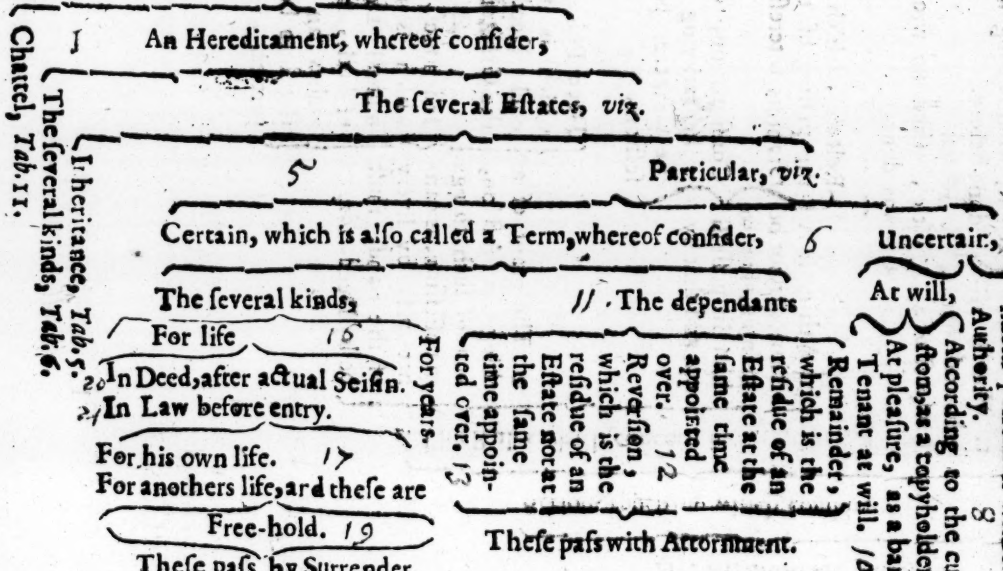

The several kinds of Possessions, and so a Possession is
An Hereditament, whereof consider,
Chattel, Tab. 11.
The several Estates, viz.
Inheritance, Tab. 5.
The several kinds, Tab. 6.
Particular, viz.
Certain, which is also called a Term, whereof consider,
Uncertain,
The several kinds,
For life
For years.
In Deed, after actual Seisin.
In Law before entry.
For his own life.
For anothers life, and these are
Free-hold.
These pass by Surrender.
The dependants
Remainder, which is the residue of an Estate at the same time appointed over.
Reversion, which is the residue of an Estate not at the same time appointed over.
These pass with Attornment.
At sufferance, when after full occupation he continueth possession without Authority.
At will,
According to the custom, as a copyholder.
At pleasure, as a bare Tenant at will.

TABLE 5.

- Inheritance, whereof consider
  - The estate called fee-simple, which is
    - Conditional, when an Hereditament is limited to the heirs of the body; hither Frank-marriage may be referred. 12
    - Absolute, which is a Fee-simple to one and his heirs whatsoever. 16
  - The Incidents,
    - Dower whereby a woman hath the thirds in severalty. 21
    - Tenancy by the courtesie of *England*. 25
  - The diverse manners of possessing it, viz. in
    - Deed.
    - Law.

TABLE 6.

- The several kinds of an Hereditament, and so it is
  - Common, as
    - A Tenement which is a possession holden, and it is
      - Land, which is a Tenement in manual occupation, and here prescription hath no place. 24
      - An Advowson, which is the Interest of presenting to a Church. 16
    - A bare Hereditament, *Tab.* 7.
  - Prerogative, *Tab.* 10.

TABLE 7.

A bare Heredirament, which concerns

- 1 Land, and so it is
  - 4 Leviable by distress, as
    - A Seigniory which is a Service, whereby Land is holden, and such Services are
      - Common to all certain Estates.
        - Fealty.
        - Rent-service: Hither also may be referred Frank almoigne, and Divine-Service.
      - Proper to Inheritance 10
        - General
          - Homage.
          - Suit of Court.
        - Particular, whereby Lands are distinguished.
          - The Services themselves,
            - Socage.
            - Knight-service.
          - 37
            - In the Lords lifetime, as reasonable Aide.
            - After his death, as Wardship and Relief.
    - A Rent charge, which is a Rent with liberty to distrain, upon the Grant or Reservation of a certain Rent to be issuing out of Land.
  - Such as cannot be distrained for, *Tab.* 8.
- The persons, *Tab.* 9.

TABLE 8.

A bare Hereditament concerning Land, for which no distress can be taken, is

- Rent-seck, which is a Rent without liberty to distrain.
- Common, which is a profit to be taken in anothers land: whither also may be referred Estovers, Houseboot, &c. Also a way over Land, liberty to Fish, Hunt, draw water, or the like.

TABLE 9.

A bare hereditament, that concerns the person, is

- Of the person himself, as a Villain.
- By reason of the person, *viz.*
  - An Annuity, which is a yearly Rent to be had of the person of the Grantor.
  - A Corody, which is a portion for ones sustenance or cloathing.
  - An Office, which is a duty of attendance upon a charge.

A Prerogative hereditament, which is derived from the Kings Prerogative, and is termed a Franchise, being a Royal privilege in the hands of a Subject; as Markets, Fairs, Toll, and whatsoever liberties else, which (created at first by the Kings special Grant, or of their own nature belonging to him) are given to a common person to have an estate in: Of this sort also are Execution and return of Writs, forfeited Recognizances, Fines, Post-fines, issues, Amerciaments, and other Green wax money within such a Precinct or Liberty. Also power there to make a Coroner, Clerk of the Market, and other Officers; to have therein Treasure Trove, Deodands, wreck of the Sea, Waifs, Estrayes, the goods of Felons, and outlawed persons, Royal Mines, Royal Fish; to keep a Leet, to take Conusance of Fines, to hold plea of debts and damages, Sans sum, and the like.

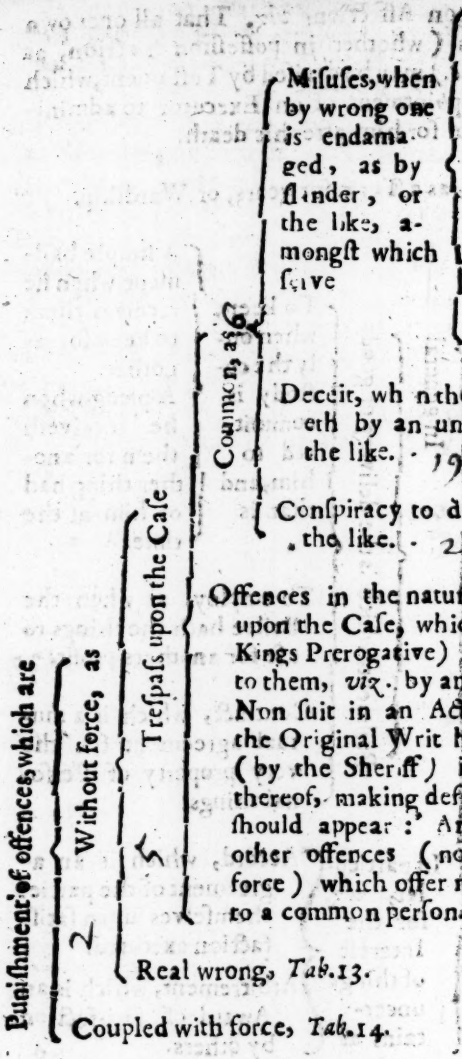
A Chattel, wherein there cannot be several Estates, whereof consider 2

The common Affection, *viz.* That all ones own Chattels (whether in possession or action, as debts, *&c.*) may be devised by Testament, which is the appointment of an Executor to administer them for him after his death. 3. 4

The several kinds, and so it is

- Real, as a Term for years, or Wardship. 15
- Personal, to which divers things belong. 14
  - In general 25.
  - Bailment, which is the delivery of goods
    - To keep, when only the custody is committed to him, and that is
      - A simple bailment, when he receives them to keep for another. 26. 27. 28
      - A pledg, when he receiveth them for another thing had of him at the time. 29
    - To employ, as when the Bailee hath the things to use for anothers profit. 30
    - Contract, which is a mutual agreement for the very property of Personal things. 31
  - In particular, *viz.* for the Interest of things uncertain, as
    - Accord, which is an agreement of the parties themselves upon satisfaction executed. 37
    - Arbitrement, which is an Award of satisfaction by others. 38

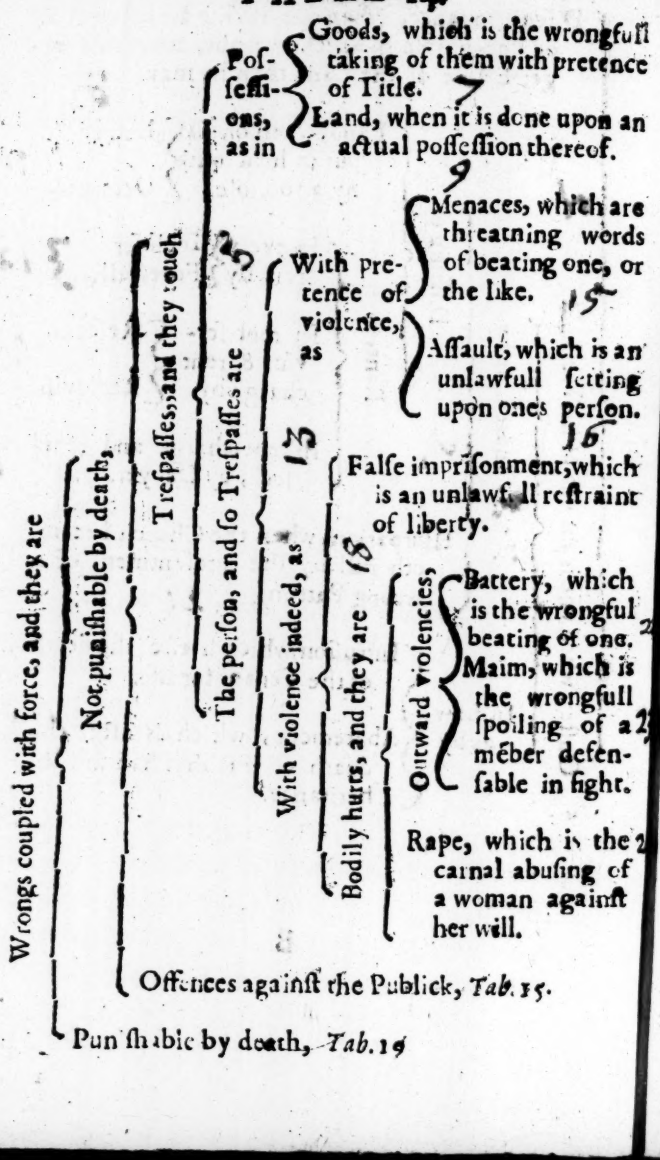
30


Punishment of offences, which are
2 Without force, as
Real wrong, Tab. 13.
Coupled with force, Tab. 14.
5 Trespass upon the Case
Common, as
Misuses, when by wrong one is endamaged, as by slander, or the like, amongst which
Disturbance, which is the hindering of that which belongeth to one to do. 16
Nusance, wch is an annoyance done to ones Hereditament. 17
Deceit, when the damage groweth by an undue sleight, or the like. 19
Conspiracy to do one wrong, or the like. 20
Offences in the nature of Trespasses upon the Case, which are (by the Kings Prerogative) punishable like to them, viz. by amerciament, as Non suit in an Action; Fault in the Original Writ he brings; Or (by the Sheriff) in the return thereof, making default, when he should appear: And whatsoever other offences (not being with force) which offer no direct injury to a common person. 21. 22

A real wrong is

- Ouster, when one is put out of his Freehold 2
  - Discontinuance, when one having an Estate Tail or Fee-simple in anothers right, maketh a larger Estate of the Land then he may. 3
- 7. 8. Indeed, as by
  - Disseisin of
    - Land, when one is put or held out by a forcible { Entry. / Detainer. } 10
    - Rents, as
      - In every rent by { Incloser. / Forestaller. } 12
      - In rent-service & rent-charge by { Rescous. / Replevin. } 16
      - In rent-charge and rent-seek, by Denyer. 19
  - Usurpation, when the Church becometh full by the presentment of a wrong Patron. 21
- In Law, as by
  - Intrusion, which is after the death of the Tenant for life.
  - Abatement, which is after the death of one that had the Inheritance. 23

TABLE 14.


Wrongs coupled with force, and they are
Not punishable by death,
Trespasses, and they touch
The person, and so Trespasses are
Possessions, as in
Goods, which is the wrongfull taking of them with pretence of Title. 7
Land, when it is done upon an actual possession thereof. 9
With pretence of violence, as
Menaces, which are threatning words of beating one, or the like. 15
Assault, which is an unlawfull setting upon ones person. 16
With violence indeed, as 13
False imprisonment, which is an unlawfull restraint of liberty.
Bodily hurts, and they are 18
Outward violencies,
Battery, which is the wrongful beating of one. 21
Maim, which is the wrongfull spoiling of a member defensable in fight. 23
Rape, which is the carnal abusing of a woman against her will. 24
Offences against the Publick, Tab. 15.
Punishable by death, Tab. 16

Offences against the publick (termed Contempts) may be committed either.

3

Against the King, as

1. To disobey the Kings Command. By his Writ. By his Proclamation. 4

2. Disobey any thing ordained by Statute.

Against the Commonwealth, viz. against

1. The peace thereof; as Riots, Routs, unlawfull Assemblies, breach of the Peace and Good behaviour, false news, Barreting, Eves-dropping, &c. Also all Trespasses with force, for which a man may be both indicted and prosecuted at Law by the Suit of the Party. 7

2. The strength, as to send aid to the Kings Enemies, to go beyond Sea, without the Kings Licence, &c.

3. The Justice, *Tab.* 16.

4. The Wealth, *Tab.* 17.

5. The Passages, *Tab.* 18.

TABLE 16.

1. Perverting of Justice, as corrupt Judges, who pervert Justice; corrupt or negligent Officers, Enditors, corrupt Jurors, Extortion; Escapes, negligent and voluntary, &c. 2. 3. 4. 5. 6

2. All force against the Justice of the Realm, as Rescous of a Felon, or others; Affrays in disturbance of Justice; to go armed in the Kings Palace: To strike in *westminster* Hall, for which he shall lose his right hand; so shall he that strikes a Juror in the presence of the Justices, and be also committed to perpetual Imprisonment. 12. 13. 14. 15. 16. 17. 18

3. Publick Offences against the Justice of the Common wealth, as

3. Conventicles, which comprehend Conspirators and Confederators, Maintenance, Champerty, &c. 19. 20. 21. 22

4. Offences in favour of Malefactors, as Misprisions of Treason or Felony, which for Treason is perpetual Imprisonment: Theft-boot, when a man receives his goods from a Thief, with purpose to favour and maintain him; here the punishment is Ransom and Imprisonment: not assisting the Sheriff, Constable, or other Officer, &c. 23. 24. 25. 26

5. Contempt of Justice, as he that flies for Treason or Felony: He that in case of Treason, or Felony tarries the Exigent: He that suffers himself to be outlawed, &c. 27. 28. 29. 30

6. Falsifying of Justice; as Perjury, Subornation, Forgery, Embracery: all other Falshood in matter of Justice, &c. 32. 33. 34

4. Publick Offences against the wealth of the Commonwealth, and that may be

- In the course of Trade, as
  1. To transport the Commodities of the Realm without the Kings Licence, and paying his Custom, Fore-stallers, Regradors, and Ingrossers, Monopolies, Conspiracies of Merchants, false Weights and Measures, &c. 3. 4. 5 6. 7. 8
  2. Uttering corrupt Victuals. not in the Table at Large
  3. Usury, and all Oppression.
- Out of the course of Trade, as Depopulation, burning of Houses, Barns, &c. 9. 10. 11. 12. 13

5. Publick offences againſt the Paſſages of the Common-wealth, as Bridges, Cawſeys, High-wayes, or Streets broken down or digged up: Unto which place may alſo be referred Common Nuſances, Purpreſtures, &c. Such Nuſances any man may abate: And as to Nuſances, there is a Writ in the Regiſter for any perſon that will ſue, when the Wayes, Streets, or Lanes of any Town, City, or Borough Corporate, or the Suburbs thereof are full of Dirt, Soil, or the like, whereby infection may be cauſed: And this Writ may be directed to the Mayor, or the like, to cauſe them to be cleanſed and kept clean. There is alſo another Writ for removing a Leper, to prevent Infection; both which Writs will come hereafter to be mentioned in their proper places.

1. 2. 3. 4. 5. 6

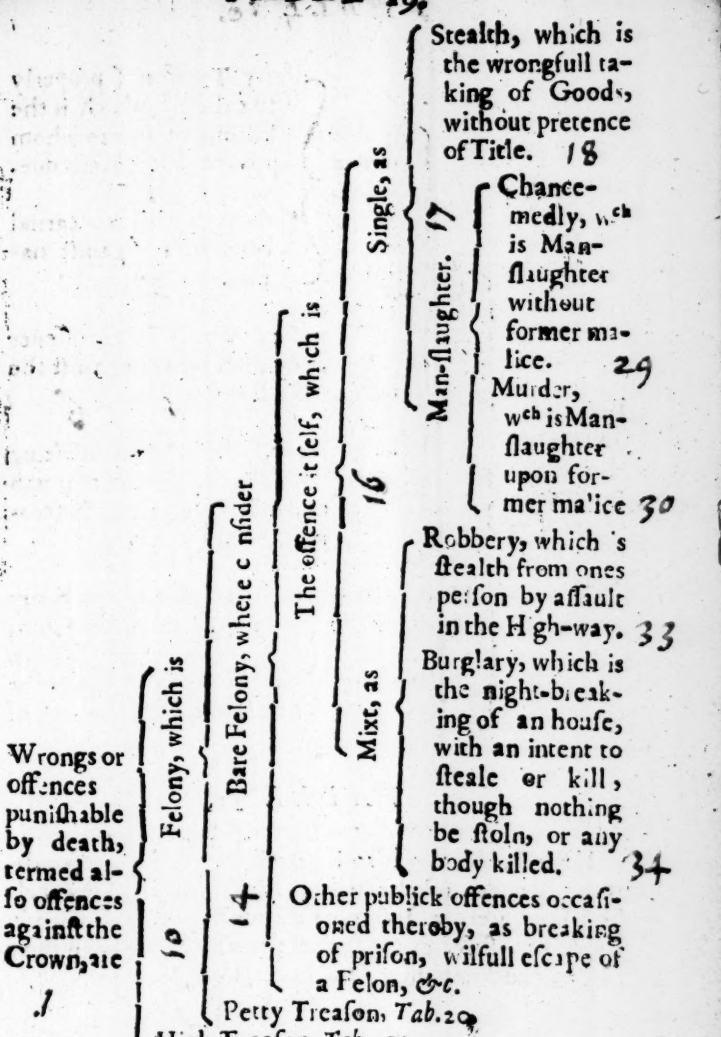

Wrongs or offences punishable by death, termed also offences againſt the Crown, are
1
Felony, which is
10
Bare Felony, where conſider
14
The offence it ſelf, which is
Single, as
16
Mixt, as
Stealth, which is the wrongfull taking of Goods, without pretence of Title. 18
Man-ſlaughter. 17
Chance-medly, wch is Man-ſlaughter without former malice. 29
Murder, wch is Man-ſlaughter upon former malice 30
Robbery, which is ſtealth from ones perſon by aſſault in the High-way. 33
Burglary, which is the night-breaking of an houſe, with an intent to ſteale or kill, though nothing be ſtoln, or any body killed. 34
Other publick offences occaſioned thereby, as breaking of priſon, wilfull eſcape of a Felon, &c.
Petty Treaſon, Tab. 20
High Treaſon, Tab. 21

TABLE 20.

Petry Treason, the punishment whereof is burning, and it is

1

General,

2

Against mortal Creatures.

4

Petry Treason (properly so called) which is the killing of one to whom private obedience is due.

5

Sodomy, which is a carnal copulation against nature.

Against God,

6

Heresie, which is an offence immediately bent against the Majesty of God.

Sorcery, which is a consulting with Devils, and containeth under it Conjuring, Necromancy, and the like.

More particular, in respect of the Kings Prerogative, as counterfeiting his Coin, Seals, &c. to acknowledge any foreign Potentate, to bring false money into the Realm, counterfeit to the money of *England*.

TABLE 21.

High Treason, which is an offence of the Crown directly bent against the State: Also to kill the Chancellor, Treasurer, a Justice of either Bench, a Justice in Eyre, of Assise, or Oyer and Terminer, being in their places, and doing their Offices, is High Treason.

1.2.3

TABLE 22.

1. The common Affection, *viz.* Action, whereof consider

The Parts, *Tab.* 23.

The places where it is transacted, *viz.* in

9 Courts of Record, as

Courts that have ordinary Jurisdiction, and they are 16

The Parliament. 17

General, whose Jurisdiction extends throughout the Realm,

Circumstances, as

Place, where they are holden, *viz.* at *Westminster*.

Time when *viz.* in the Term of

Michaelmas.
Hillary. 22
Easter,
Trinity.

The several kinds,

Chancery.
Kings Bench.
Common-place. 34
Exchequer.

Within some 21 County

Through the whole County, 50

The Sheriffs turn. 51
The Coroners Court. 55

Within Liberties, as

A Leet 59
A Court of Pipowders. 60

Granted by the Kings Letters Patents

Courts by the Kings Commissions. 61. 62
Courts by Charter in Corporations, &c. 63

Court Barons, 68

The Lords { Of a Manor. } 69. 70
{ Of an Hundred. }
The Sheriffs, called the County Court. 71

The parts of an Action are
- The Suit, which hath 2 parts, viz. 1
- The beginning of the Suit, which hath 2 parts 4
- The first matter of the Suit 6
- For every man 8
- By Writ out of the Chancery, which is 12
- Original, which concerns 18
- Common Pleas, and so it is 27
- Real, whereof consider
- The Common Affections as *Tab.* 24.
- The several kinds, *Tab.* 25.
- Personal, *Tab.* 31.
- Appeals, *Tab.* 33.
- Commissional, *Tab.* 34.
- By Plaint, or Bill, *Tab.* 35.
- For the King, *Tab.* 36.
- The Original Process, *Tab.* 37.
- The Proceeding, *Tab.* 40.
- The Judgment, *Tab.* 46.

TABLE 24.

The common affections, as
- Possessory, to recover a Possession
  - In himself, descended from his Ancestor.
- In the Right, to recover a Possession mixt in the right
  - In himself, descended from his Ancestor.

The several kinds of a real Original Writ, and so it is

- A *Si fecerit te securum*, Tab. 30.
- A *Præcipe quod faciat*, Tab. 29.
- Another real *præcipe quod reddat*, Tab. 28.
- A writ shewing the Demandants Title, Tab. 27.
- A Writ of Entry, the several kinds thereof will best appear, if we consider
  - Against whom it is brought, viz.
    - Against the first party,
    - In the degrees
      - In the *Per*.
      - In the *Per* and *Cui*.
  - How it grows, viz.
    - Upon a wrong, Ta. 26.
    - without wrong at the first
      - Upon disability of the person that made it
        - *Dum fuit infra ætatem.*
        - *Dum fuit non compos mentis.*
      - Upon the determination of the first Estate, viz. by reason of
        - A particular estate ended
          - *Ad terminum qui præteriit.*
          - Entry, *ad Communem Legem.*
        - A condition broken, as *Causa Matrimonii prælocuti.*
- A Plea of Land
- A *Præcipe quod reddat*
- A *præcipe*

TABLE 26.

- Upon a wrong, viz.
  - Upon a discontinuance:
    - For the recovery of a womans Inheritance or Free-hold, after her husbands alienation, and
      - Death, as *Cui in vita*, and for her Heir, a *sur cui in vita*.
      - Divorce, as a *Cui ante divorcium*:
    - For the Successor of a Bishop, or, &c. after the discontinuance of his Predecessor, as a *Sine assensu capituli*.
  - An Ouster
    - Upon an Intrusion, as a Writ of Intrusion for him in Reversion, or Remainder:
    - Upon a Disseisin, as a Writ of Entry in the *Quibus*, being a Writ in the nature of an Assise.

TABLE 27.

A Writ shewing the Demandants Title, which is

- Possessory as a Writ of
  - Ayel, after the death of the Grand-father, or Grand-mother.
  - Besayel, after the death of the great Grand father, or great Grand-mother.
  - Cousinage, after the death of the great great Grand-father, or great great Grand-mother, &c.
- In the right
  - A Writ of right in his nature, as a
    - Formedon in { Remainder, Reverter.
    - Writ of Escheat:
    - Writ of Dower, *unde nihil habet*:
  - A Precipe in Capite, for the meer right of Lands holden in chief.

TABLE 28.

Another real *Præcipe quod reddat*, in respect of a Seigniory, as
- A Writ of Right of Ward, to recover the Wardship.
- A Writ of Right for Disclaimer, for the Lord to prove the Lands to be holden of him, when the Tenant in a Court of Record disclaimeth to hold of him.

TABLE 29.

A real *Præcipe quod faciat*, which is either to recover an
- Hereditament, and this is either
  - In respect of a Seigniory:
    - A Writ *de consuetudinibus & servitiis.*
    - *Secta ad molendinum.*
  - To recover some other Hereditament.
    - A *Quare Impedit.*
    - A *Quod permittat.*
    - A *Curia claudenda.*
- Some real thing that concerns an Hereditament, as
  - A Writ of Covenant, as to levy a Fine of Lands, *&c.*
  - Writs in the nature of a Covenant real.
    - A Writ of Mesne.
    - A *Warrantia Cartæ.*

TABLE 30.

- A real *Si fecerit te securum.*
  - An Assise
    - Of his own possession, as
      - An Assise of Novel Disseisin,
      - An Assize of Nusance.
    - Of his Ancestors Possession; as an Assise of *Mort dancestor.*
    - Either of his own or his Ancestors possession, as an Assise of Darrein presentment.
  - A *Juris utrum*, for a Parson or Vicar, upon his Predecessors alienation.
  - Others
    - Such as be between Privies in blood; as
      - A *Partitione faciunda.*
      - A *Nuper obiit.*
    - A *Quo jure*, to try for Common.

TABLE 31.

- A personal Original Writ is also
  - A *Præcipe*
    - A *Præcipe quod reddat.*
      - Debt, and a Writ of Annuity.
      - Detinue.
    - A *Præcipe quod faciat.*
      - An Action of Account.
      - An Action of Covenant.
  - A *Si faceri te securum*, Tab. 32.

TABLE 32.

A personal *Si fecerit te securum*, which is

- Without force,
  - Where the peace is not broken.
    1. *Rationabili parte bonorum.*
    2. *Valore Maritagii.*
    3. Wait or forfeiture of Marriage.
    4. Intrusion of Ward.
    5. *Ejectione custodiæ.*
    6. *Quare ejecit infra terminum.*
    7. Trespasses upon the Case, not against the Peace.
  - Where the Peace is broken, yet not *Vi*, as
    - An Action of Deceit.
    - An Action of Conspiracy.
- With force
  - An Action of Trespass.
  - Special Actions of Trespass, as
    - *De parco fracto.*
    - *Rescous.*
    - *Ejectione firmæ.*

TABLE 33.

An Appeal which concerneth life, and is the parties private Action, prosecuting also for the Crown, in respect of a Felony, and this is given onely to the Heir of the party slain.

TABLE 34.

A Commissional Writ, which is either.

- Commissionary, as
  - A Writ of right Patent.
  - A *Justiciis*,
    - An Assise of petty Nusance.
    - Admeasurement of Dower.
    - Admeasurement of Pasture.
    - A *Nativo habendo*.
    - A *Rationabilibus divisis*.
    - A *Homine replegiando*.
    - A Replevin.
    - Also many of the Actions that went before, as *Consuetudinibus & Servitiis*, *Secta ad molendinum*, *Quod permittat*, Mesne Dower, *unde nihil habet*, Annuity, Debt, Detinue, Covenant, Trespass, *&c.* to what sum soever, be brought, and also determined in the County by Justices:
- Meer Commissions, as,
  - *Oyer* and *Terminer*.
  - Association.
  - *Si non omnes*.
  - *Ad quod damnum*.
  - *Perambulatione faciendâ*.

TABLE 35.

In Courts that hold plea without original Writ, the Suit may be by

- Plaint in matters that concern Common-pleas.
- Bill, in Pleas of the Crown; also Officers of any Court (by priviledge) may sue or be sued there, and not elsewhere by Bill.

- Suits for the King are
  - As enquiry by a Jury, which is an
    - Office to entitle the King to some Possession, whereof consider
      - The several Writs or Commissions used therein concerning a Wardship, viz.
        - The several wayes how it may be found, *viz. Virtute officii brevis, & Commissionis.*
        - For finding of it,
          - *Diem clausit extremum*, within the year after the Tenants death.
          - *Mandamus* after the year.
          - *Devenerunt*, when the Ancestor died in Ward to the King.
        - For mending it,
          - *Quæ plura Melius Inquirendum.*
          - *Datum est nobis intelligi.*
        - For discharge of it.
          - An *Ætate probanda.*
          - A Writ of Livery, for Lands *in Capite.*
          - An *Ouster le main*, for other Knight service Lands.
      - How the party may be relieved against it.
        - By Traverse or *Monstrans de droit*, when the King is entitled by Office onely.
        - By Petition, when he is intitled by double matter of Record, as when the Office finds an Attainder of Treason, or the like.
    - A *Quo warranto*, for the trying of the right of Franchises.
  - Presentment or Indictments to find an Offence against the King, and for penal Laws, an Information.

The Original Proceſs, which is

- Proper,
  - Single,
    - By the Poſſeſſions
      - By the Land,
        - In all real *Præcipes quod reddat*,
          - Summons in Land.
          - Grand cape, to ſeiſe it into the Kings hands.
        - A *Mortdanceſter*, *Juris utrum*, & Darrein preſentment,
          - Summons,
          - Re ſummons,
          - and upon default the Inqueſt awarded.
      - By the Goods, as in Aſſiſes of Novel Diſſeiſin and Nuſance, Attachment by the Defendants goods, which he ſhall loſe if he appear not, and upon default the Inqueſt awarded.
    - By the perſon (in Mayhem, Felony, and Treaſon) *Cap. Exig.* Outlawry.
  - Mixt,
    - By the Goods and Lands
      - In all other real Actions, and in all perſonal Actions, (except Treſpaſs, & Offences againſt the Publick,) and alſo in all *Juſticies*,
        - Summons by the Goods.
        - Attachment.
        - Diſtreſs infinite, and iſſues of the Land.
      - In all Treſpaſſes upon the Caſe (except deceit and conſpiracy) and in all offences in the nature of treſpaſſes upon the caſe,
        - Attachment.
        - Diſtreſs infinite, & iſſues.
    - By the Goods and Perſon, as in Treſpaſs *vi*, Deceit, Conſpiracy, and Offences againſt the Publick; Attachment, Diſtreſs infinite, and upon *nihil* returned, 3. *Capias Exigent*, Outlawry.
- Improper, *Tab.* 38.

Improper, which is not to bring any matter into Plea, or ſolemn Action, but only to do, or leave undone ſomething, and it is

- Commandatory, as
  - *Dote aſſignanda.*
  - *Homagio capiendo.*
  - *Scutagio habendo.*
  - *De Corrodio habendo.*
  - *De Annua penſione hab.*
  - *De Libertatibus alloc.*
  - *De excutione Judicii.*
  - *De reſtitutione Temporalium.*
  - *De ſecuritate pacis.*
  - *De vi laica removenda.*
  - Of cleanſing Streets.
  - *De excommunicato capiendo.*
  - *De excommunicato deliberando.*
  - *De leproſo amovendo.*
  - *De cautione admittanda.*
  - *De hæretico comburendo.*
  - *De Coronatore exonerando.*
  - *De Coronatore eligendo.*
  - *De exoner. vir : foreſt.*
  - *De Electione vir : foreſt.*
  - A Writ for the Royal Aſſent, to elect an Abbot.
  - *De ſecuritate invenienda.*
  - All *Dedimus poteſtatems, de fine levando, de attornato faciendo,* &c.
- Prohibitory, *Tab.* 39.

Prohibitory, as

1. A Protection, *cum clauſulâ nolumus*, to free ones Poſſeſſions, that nothing be taken againſt his will for the Kings buſineſs.

2. To diſcharge Spiritual Perſons of Fifteens.

3. *Quod clerici non eligantur in Officium Balivi*, &c.

4 To forbid Tenant in Dower, by the Curteſie, or Guardian by Knight-ſervice, or in Soccage to commit Waſte, to the deſtruction of the Inheritance.

5. A *Quo minus*, for Grantee of Eſtover, to reſtrain the Grantors from commiting Waſte, ſo as he cannot have his Eſtovers.

6. *De exoneratione ſectæ*, for Tenants by Suit of Court or other Services, that they be not diſtrained to do the ſame for ſuch time as they ought to hold the Land diſcharged.

7. *De deonerando pro rata*, To diſcharge the Tenant of parcel of the Land according to the rate of his Land, when he is lawfully diſtrained for all the Rent and Services.

8 *De eſſendo quieto de Theloneo.*

9. *De non ponendo in Juratis.*

10. *Ne exeas regnum.*

The Proceedings, which consists in

- The Count, or Declaration.
- The pleading, which Pleas are
  - The Defendants first Pleas, *viz.*
    - Dilatory, by taking Exceptions
      - In disability
        - To the jurisdiction of the Court.
        - To the person.
      - In Abatement
        - To the Writ, as default of form, false Latine, *&c.* and here, if the default be not caused by the Plaintiff, a new Writ may be had by Journies Accounts.
        - To the Count, as insufficiency, variance from the Writ, *&c.*
    - Forain advantages
      - In all Actions, as *Oyer* of the Writ, Condition, *&c.*
      - In real Actions, as
        - View.
        - Ayde prayer.
        - Voucher.
      - In certain personal Actions:
        - Garnishment.
        - Enterpleader, which may also be in a *Quare impedit*,
    - Sanctuary, and there continuing, *viz.* for Treason, and other Capital Offences.
    - To the action, as
      - Pleas in Bar:
      - Confessions, to which place Abjuration may be referred, when one guilty of bare Felony, flyeth to the Church, *&c.* and there before the Coroner confesseth the Fact, and abjures the Realm.
  - The mutual pleas of Plaintiff and Defendant, *Tab.* 41.
- Other mean Acts, *Tab.* 42.

The mutual Pleas of Plaintiff and Defendant, *viz.*

- The declaring before issue, as Replication Rejoynder, Sur-rejoynder, *&c.*
- The Issue it self
  - Of the Fact, and then the trial is
    1. Of a matter done in the County, by Jury, where challenges are allowed, *viz.*
       - To the Array.
       - To the Poles.
    2. In Writs of right or appeals for life by Battail.
    3. In a Writ of Dower (when the issue is taken upon the death of her husband) by witness.
    4. By wager of Law.
       1. When the Tenant in a real *præcipe quod reddat* was not summoned.
       2. In meer personal actions growing without deed or privity of others.
       3. In Plaints in Court Barons.
  - Of the Law, as a Demurrer, which is when (admiting the matters alledged) either of them resteth in the Judgment of the Law.

TABLE 42.

Other means Acts, as
- 1. Apparance, where, of Essoins, which are
  - Common, as *Essoine de mal venir.*
  - Special
    1. Of going beyond Sea.
    2. Of going *ad terram Sanctam.*
    3. Of the Kings Service.
    4. *De malo lecti.*
- 2. Continuance,
  - By Proces.
  - Upon the Roll
    - *Dies datus.*
    - *Emparlance.*
- 3. Judicial Proces,
  - A Mesne Proces, which is for any necessary act to be done, as against Vouchee, Prayee in aide, also
    - 1 Upon a fine levied to compel Attornment, as
      1. *Per quæ servitia.*
      2. *Quem reddidit reddit.*
      3. *Quid juris clamat.*
    - 2. In Petitions, a Writ of search.
    - 3 In real *Præcipe*, upon a default, petty Cape.
    - 4. Upon default, after Voucher, a petty Capè, *ad valentiam.*
    - 5. In such as are for other Hereditaments, upon default, a Distress.
    - 6. Against Jurors,
      1. A *Venire facias.*
      2. A *Habeas corpora.*
      3. A Distress infinite.
  - Proces in nature of new Originals, *Tab.* 43.

Process in the nature of new Originals, & they are

Comandatory, *viz.* such as command something to be done,

1. Resummons, re-attachment.
2. All certificatory Writs.
3. A *Certiorari*, to remove a Record into the Chancery.
4. Writs to remove Suits,
   - By Writ, as a
     - Tolt, to remove a Writ of right out of the Lords into the County-Court.
     - *Pone*, to remove out of the Lords Court into the Common-place in all other causes.
   - By Plaint, as a
     - *Recordare*, to remove Plaints in the County-Court.
     - *Accedas ad curiam*, to remove Plaints in a Court Baron.
5. A *Mittimus*, to send a Record out of the Chancery into another Court of Record.
6. A *Procedendo*, to proceed in Suits.
7. A Consultation, to proceed in the Spiritual Court.
8. A Writ of Main-prise, to set one at liberty upon Bail.
9. A Recaption, for him whose Goods are distrained for the same thing.
10. A Writ *de Magna Assisa eligenda*.
11. A Certificate of Assise to Jurors, to give a more perfect Verdict.
12. A *Proprietate probanda*.

Prohibitory Wris, *Tab.* 45.

Prohibitory Writs, or Process, as

1. Prohibitions, of this kind is an *Indicavit.*

2. A *Supersedeas*, of which kind are
   1. A Writ of Peace.
   2. A *Libertate probanda.*
   3. An *Identitate nominis.*

3. Protections *Cum clausula nolumus*, as
   Protectio quia profecturus.
   Protectio, quia moratur, whither also may be referred, *Protectio quia in prisona,*

4. *Essoine ac malo lecti.*

5. A *Ne admittas.*

6. A *Quare incumbravit.*

Judgment which hath Judicial Writs belonging to it, viz.

- Meer Judicial, and they are
  - Such as lye within a year and a day after the Judgment,
    - In real Actions,
      1. *Habere facias seisinam*, to put him in possession upon a Freehold recovered.
      2. A Writ to the Bishop to admit ones Clerk.
    - In Personal Actions to have Execution of his
      - Possessions, as
        1. *Fieri facias*, to levy Execution upon his Chattels.
        2. *Levari facias*, to levy Execution of the profits of his Land and Chattels.
        3. *Habere facias possessionem*, upon recovery of a term for years in an *Ejectione firmæ, &c.*
        4. A *Distringas*, for the Kings Amerciaments, *&c.*
      - Bodily, as
        - *Capias ad satisfaciendum.*
        - *Capias pro fine Regis.* — For the King.
        - *Capias Utlagatum.* — For the King.
  - A *Scire facias*, to warn the Defendant, after a year, upon recovery in real Actions, to shew cause why the Plaintiff should not have Execution.

New Originals, *Tab.* 47.

New Originals in the nature of judicial Writs, to order some matters concerning Judgments, and these are grounded

- Upon an Error
  - A Writ of Error, which is upon an Error in a Court of Record.
  - A Writ of false Judgment, which is upon an Error in a base Court.
- Otherwise, as
  - Attaint, which is to enquire whether a Jury of twelve men gave a false Verdict.
  - *Audita querela*, which is for one being, or to be in Execution, to relieve him upon good matter of discharge which he hath no means to plead.

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